DIVISION A—IMPROVEMENTS TO SUPERVISION OF FINANCIAL FIRMS

TITLE I—FINANCIAL SERVICES OVERSIGHT COUNCIL

SEC. 101. SHORT TITLE.

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

SEC. 102. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.

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

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

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

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

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

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

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

(6) the Chairman of the Securities and Exchange Commission;
(7) the Chairman of the Commodity Futures Trading Commission;
(8) the Chairperson of the Federal Deposit Insurance Corporation; and
(9) the Director of the Federal Housing Finance Agency.

(c) PURPOSES AND FUNCTIONS.—

(1) The Financial Services Oversight Council shall—

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

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

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

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

(E) provide a forum for discussion and analysis of emerging market
developments and financial regulatory issues and for resolution of jurisdictional
disputes among the members of the Council.

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

SEC. 103. RECOMMENDATIONS AND CONSULTATION.

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

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

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

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

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

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

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

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

SEC. 104. FINANCIAL SERVICES OVERSIGHT COUNCIL AUTHORITY.

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

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

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

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

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

SEC. 105. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.

The Financial Services Oversight Council is authorized to appoint such special advisory,
technical, or professional committees as may be useful in carrying out its functions, and the
members of such committees may be members of the Financial Services Oversight Council, or
other persons, or both.

SEC. 106. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS.

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

SEC. 107. ASSISTANCE FROM FEDERAL AGENCIES.

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

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

SEC. 108. REPORTS TO CONGRESS.

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

SEC. 109. APPLICABILITY OF CERTAIN FEDERAL LAWS.
The Federal Advisory Committee Act shall not apply to the Financial Services Oversight Council, or any special advisory, technical, or professional committees appointed by the Financial Services Oversight Council.
TITLE II—CONSOLIDATED SUPERVISION AND
REGULATION OF LARGE, INTERCONNECTED
FINANCIAL FIRMS

SEC. 201. SHORT TITLE.
This Act may be cited as the “Bank Holding Company Modernization Act of 2009”.

SEC. 202. FINDINGS AND PURPOSES.
(a) The Congress finds that—

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

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

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

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

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

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

SEC. 203. DEFINITIONS.

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

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

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

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

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

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

“(2) in whole or in part engaged in, directly or indirectly, including through a
branch in the United States, activities in the United States that are financial in nature.

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

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

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

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

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

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

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

“(1) DESIGNATION.—

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

“(i) the amount and nature of the company’s financial assets;
“(ii) the amount and types of the company’s liabilities, including the degree of reliance on short-term funding;
“(iii) the extent of the company’s off-balance sheet exposures;
“(iv) the extent of the company’s transactions and relationships with other major financial companies;
“(v) the company’s importance as a source of credit for households, businesses and State and local governments and as a source of liquidity for the financial system;
“(vi) the recommendation, if any, of the Financial Services Oversight Council; and
“(vii) any other factors that the Board deems appropriate.

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

“(i) the amount and nature of the company’s United States financial assets;
“(ii) the amount and types of the company’s liabilities used to fund activities and operations in the United States, including the degree of
reliance on short-term funding;

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

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

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

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

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

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

“(D) NOTICE AND OPPORTUNITY FOR HEARING AND OF FINAL DETERMINATION.—The Board shall provide a company notice of the Board’s proposed determination to designate or rescind the designation of the company as a Tier 1 financial holding company. Within 30 days from the date of any notice of
the proposed designation or rescission of designation, the company may request in
writing an opportunity for a written or oral hearing before the Board to contest the
proposed designation or rescission of the designation of the company as a Tier 1
financial holding company. Upon receipt of a timely request, the Board shall fix a
time (not more than 30 days after receipt of the request) and place at which such
company may appear, personally or through counsel, to submit written materials
(or, at the sole discretion of the Board, oral testimony and oral argument). Within
60 days of any such hearing, the Board shall notify the company of its final
determination, which shall contain a statement of the basis for the Board’s
decision. If the company does not make a timely request for a hearing, the Board
shall notify the company, in writing, of its final determination under subparagraph
(A), (B), or (C), as appropriate not later than ten days after the expiration of the
date by which the company may request a hearing.

“(E) EMERGENCY EXCEPTION.—The Board may waive or modify the
requirements of subparagraph (D) with respect to a company if the Board
determines, by an affirmative vote of not less than five members or if there are
fewer than five members then serving by a unanimous vote of all available
members then serving, that such waiver or modification is necessary or
appropriate to prevent or mitigate threats posed by the company to financial
stability. The Board shall provide notice of such waiver or modification to the
company concerned as soon as practicable, which shall be no later than 24 hours
after the waiver or modification. The Board shall also allow such company to
request in writing an opportunity for a written or oral hearing before the Board to
contest the waiver or modification within 10 days of the receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Board shall fix a time (not more than 15 days after receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Board, oral testimony and oral argument). Within 30 days of any such hearing, the Board shall notify the company of its final determination, which shall contain a statement of the basis for the Board’s decision.

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

“(2) COLLECTION OF INFORMATION.—

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

“(i) $10 billion or more in assets;

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

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

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

“(B) FOREIGN FINANCIAL COMPANY.—The Board may require any
Foreign financial company that, based on its most recent audited or unaudited
financial statements available, has—

“(i) $10 billion or more in assets in the United States;
“(ii) $100 billion or more in assets under management in the
United States; or
“(iii) $2 billion or more in gross annual revenue in the United
States,

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

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

“(4) EXAMINATION.—If the Board is unable to determine whether a United States
financial company’s financial activities pose a threat to financial stability based on
regulatory reports obtained under paragraph (3), discussions with management, and
publicly available information, the Board may conduct an examination of the United
States financial company for the sole purpose of determining whether to designate the
company as a United States Tier 1 financial holding company.
“(b) Registration of Tier 1 Financial Holding Companies.—Within one hundred and eighty days after receipt of the Board order or regulation designating a company as a Tier 1 financial holding company, each Tier 1 financial holding company shall register with the Board on forms prescribed by the Board, which shall include such information as the Board may deem necessary or appropriate to carry out the purposes of this title. The Board may, in its discretion, extend the time within which a Tier 1 financial holding company shall—

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

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

“(c) Standards for Tier 1 Financial Holding Companies.

“(1) Prudential Standards for U.S. Tier 1 Financial Holding Companies.—In order to mitigate the risks to United States financial stability and the United States economy posed by United States Tier 1 financial holding companies, the Board shall prescribe, by regulation or order, prudential standards for United States Tier 1 financial holding companies to maximize financial stability at the least cost to long-term financial and economic growth. The prudential standards shall be more stringent than the standards applicable to bank holding companies to reflect the potential risk posed to financial stability by United States Tier 1 financial holding companies and shall include, but not be limited to—

“(A) risk-based capital requirements;

“(B) leverage limits;

“(C) liquidity requirements; and

“(D) overall risk management requirements.

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

“(A) risk-based capital requirements;

“(B) leverage limits;

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

“(D) overall risk management requirements.

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

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

“(5) WELL CAPITALIZED AND WELL MANAGED.—A Tier 1 financial holding
company shall at all times after it files its registration statement be well capitalized and
well managed.
“(d) REPORTS, EXAMINATIONS OF, AND PUBLIC DISCLOSURES BY TIER 1 FINANCIAL HOLDING COMPANIES AND THEIR SUBSIDIARIES.—

“(1) REPORTS.—

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

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

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

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

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

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

“(iii) the nature and extent to which other Tier 1 financial holding
companies have credit exposure to the Tier 1 financial holding company.

“(C) USE OF EXISTING REPORTS.—

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

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

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

“(III) externally audited financial statements.

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

“(2) EXAMINATION—

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

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

“(ii) to inform the Board of—

“(I) the financial, operational and other risks within the holding company that may pose a threat to the safety and
soundness of any depository institution subsidiary of such holding company or financial stability;

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

and

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

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

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

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

“(B) FEDERAL DEPOSIT INSURANCE CORPORATION BACK-UP EXAMINATION AUTHORITY.—
“(i) REFERRAL.—If the Federal Deposit Insurance Corporation has reasonable cause to believe that a condition, practice, or activity of a Tier 1 financial holding company or one of its subsidiaries does not comply with this Act or the rules or orders prescribed by the Board under this Act or otherwise poses a material risk to an affiliated depository institution or the Tier 1 financial holding company as a whole, the Federal Deposit Insurance Corporation may recommend in writing to the Board that the Board examine the Tier 1 financial holding company or one of its subsidiaries. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

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

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

“(c) ENFORCEMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a Tier 1 financial holding company and its subsidiaries (other than a bank) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C.
1818) in the same manner and to the same extent as if the Tier 1 financial holding
company were a bank holding company and its subsidiaries (other than a bank) were
State member insured depository institutions as provided in section 8(b)(3) of the Federal
Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

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

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

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

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

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

“(2) DESIGNATION REGULATION.—The Board shall prescribe regulations, in
consultation with the Secretary of the Treasury and the Financial Services Oversight Council, containing the criteria for designation of Tier 1 financial holding companies.

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

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

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

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

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

“(ii) notified, in writing, the relevant Federal regulatory agency of its belief under clause (i) with supporting documentation included and
with a recommendation that the relevant Federal regulatory agency take
one or more specific supervisory actions against the subsidiary; and
“(iii) not been notified, in writing, by the relevant Federal
regulatory agency of the commencement of a supervisory action
recommended by the Board against the subsidiary within 30 days from the
date of the notification under clause (ii).

“(g) FIVE-YEAR TRANSITION.

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

“(2) NON-FINANCIAL ACTIVITIES.—After the five-year period described in
paragraph (1), a Tier 1 financial holding company shall be subject to the same
activity restrictions applicable to financial holding companies under section 4 of

“(3) ESTABLISHMENT OF SINGLE INTERMEDIATE HOLDING COMPANY.—Any
United States Tier 1 financial holding company which is engaged predominantly
in activities which are not financial in nature shall, in accordance with regulations
prescribed by the Board, establish and conduct its activities which are financial in
nature through a single intermediate holding company during the phase-in period
described in paragraph (1).
“(4) DATE OF ESTABLISHMENT.—A Tier 1 financial holding company described in paragraph (3) shall establish an intermediate holding company as required by paragraph (3) no later than 90 days after it has been notified that it has been designated a Tier 1 financial holding company pursuant to subsection (a).

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

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

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

“(i) ACQUISITIONS.—

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

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

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

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

“(D) STANDARDS FOR REVIEW.—

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

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

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

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

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

(b) PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL HOLDING COMPANIES.—The Bank
Holding Company Act of 1956 is amended by adding after section 6, as amended by this Act, the following new section:

"SECTION 6A. PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL HOLDING COMPANIES.

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

"(b) DEFINITIONS.—For purposes of this section—

“(1) CAPITAL CATEGORIES.—

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

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

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

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

“(2) OTHER DEFINITIONS.—

“(A) AVERAGE.—The ‘average’ of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close
of business on each business day during that period divided by the total number of
business days in that period.

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

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

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

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

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

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

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

“(F) REQUIRED MINIMUM LEVEL.—The term ‘required minimum level’
means, with respect to each relevant capital measure, the minimum acceptable
capital level specified by the Board by regulation.
“(G) SENIOR EXECUTIVE OFFICER. The term ‘senior executive officer’ has the same meaning as the term ‘executive officer’ in section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b).

“(c) CAPITAL STANDARDS.—

“(1) RELEVANT CAPITAL MEASURES.—

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

“(i) a leverage limit; and

“(ii) a risk-based capital requirement.

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

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

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

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

“(3) CRITICAL CAPITAL.—

“(A) BOARD TO SPECIFY LEVEL.—

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

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

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

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

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

“(d) CAPITAL DISTRIBUTIONS RESTRICTED.—

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

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

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

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

“(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING
COMPANIES.—

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

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

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

“(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.

“(2) CAPITAL RESTORATION PLAN REQUIRED.—

“(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).

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

“(i) specify—

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

“(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;

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

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

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

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

“(i) complies with subparagraph (B);

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

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

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

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

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

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

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

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

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

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

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

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

or

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

“(5) DISCRETIONARY SAFEGUARDS.— The Board may, with respect to any
undercapitalized Tier 1 financial holding company, take actions described in any
subparagraph of subsection (f)(2) if the Board determines that those actions are
“(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED TIER 1 FINANCIAL
HOLDING COMPANIES AND UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING COMPANIES THAT
FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

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

“(A) is significantly undercapitalized; or
“(B) is undercapitalized and—

“(i) fails to submit an acceptable capital restoration plan within the time allowed by the Board under subsection (e)(2)(D); or
“(ii) fails in any material respect to implement a capital restoration plan accepted by the Board.

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

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

“(i) Requiring the Tier 1 financial holding company to sell enough shares or obligations of the Tier 1 financial holding company so that the Tier 1 financial holding company will be well capitalized after the sale.
“(ii) Further requiring that instruments sold under clause (i) be voting shares.
“(iii) Requiring the Tier 1 financial holding company to be acquired by or combine with another company.
“(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

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

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

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

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

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

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

“(ii) Dismissing directors or senior executive officers.—Requiring the Tier 1 financial holding company to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the Tier 1 financial holding company became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).
“(iii) Employing qualified senior executive officers.— Requiring the Tier 1 financial holding company to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

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

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

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

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

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

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

“(A) IN GENERAL.—The Tier 1 financial holding company shall not do any of the following without the prior written approval of the Board—
“(i) Pay any bonus to any senior executive officer.

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

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

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

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

“(1) IN GENERAL.—If the Board determines (after notice and an opportunity for hearing) that a Tier 1 financial holding company is in an unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the Tier 1 financial holding company to be engaging in an unsafe or unsound practice, the Board may—
“(A) if the Tier 1 financial holding company is well capitalized, require
the Tier 1 financial holding company to comply with one or more provisions of
subsections (d) and (e), as if the institution were undercapitalized; or

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

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

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

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

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

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

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

“(k) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with
their foreign counterparties and through appropriate multilateral organizations to reach
agreement to extend comprehensive and robust prudential supervision and regulation to all
highly leveraged and substantially interconnected financial companies. In its regulation and
supervision of Foreign Tier 1 financial holding companies, the Board shall take into account the
extent to which such companies are subject to standards comparable to those applied to United
States Tier 1 financial companies.”.

“(I) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

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

“(2) PROCEDURE.—

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

“(i) submit written materials in support of the petition; and
“(ii) appear, personally or through counsel, before 1 or more
members of the Board or designated employees of the Board.

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

“(i) schedule the hearing referred to in subparagraph (A)(ii)
promptly after the petition is filed; and
“(ii) hold the hearing not later than 30 days after the petition is
filed, unless the petitioner requests that the hearing be held at a later time.

“(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the
hearing, the Board shall—
“(i) by order, grant or deny the petition;

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

the order; and

“(iii) notify the petitioner of the order.

“(3) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the

burden of proving that the petitioner's continued employment would materially

strengthen the Tier 1 financial holding company's ability—

“(A) to become well capitalized, to the extent that the order is based on the

Tier 1 financial holding company's capital level or failure to submit or implement

a capital restoration plan; and

“(B) to correct the unsafe or unsound condition or unsafe or unsound

practice, to the extent that the order is based on subsection (g)(1).”.

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

“(1) TERMINATION AUTHORITY.—If the Board believes that a condition, practice,

or activity of a Foreign Tier 1 financial holding company does not comply with this title

or the rules or orders prescribed by the Board under this title or otherwise poses a threat

to financial stability, the Board may, after notice and opportunity for a hearing, order a

Foreign Tier 1 financial holding company that operates a branch, agency or subsidiary in

the United States to terminate the activities of such branch, agency, or subsidiary.

“(2) DISCRETION TO DENY HEARING.—The Board may issue an order under

paragraph (1) without providing for an opportunity for a hearing if the Board determines

that expeditious action is necessary in order to protect the public interest.”.

(c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title
11, United States Code, is amended—

(1) in subsection (h)—

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

(B) by striking the period at the end of paragraph (2) and inserting ‘; or’;

and

(C) by adding the following new paragraph—

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

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

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

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

“(b) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each Tier 1 financial holding company from having credit exposure to any unaffiliated
company that exceeds 25% of the Tier 1 financial holding company’s capital stock and surplus
or such lower amount as the Board may determine by regulation to be necessary to mitigate risks
to financial stability.

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

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

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

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

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

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

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

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

“(d) ATTRIBUTION RULE.—For purposes of this section, any transaction by a Tier 1
financial holding company with any person is a transaction with an company to the extent that
the proceeds of the transaction are used for the benefit of, or transferred to that company.
“(e) RULEMAKING.— The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section.

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

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

SUPERVISION AND REGULATION OF

FEDERAL DEPOSITORY INSTITUTIONS

SEC. 301. SHORT TITLE.
This title may be cited as the “Federal Depository Institutions Supervision and Regulation Improvements Act of 2009”.

SEC. 302. DEFINITIONS.
For purposes of this title, the following definitions shall apply:

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

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

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


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

(7) TRANSFER DATE.—The term “transfer date” has the meaning provided in
section 322.

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

Subtitle A—National Bank Supervisor Established

SEC. 311. ESTABLISHMENT.

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

SEC. 312. DIRECTOR.

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

(b) APPOINTMENT.—

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

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

1. 5 years.—The Director shall be appointed for a term of 5 years.

2. Continuation of service.—The Director may continue to serve after the expiration of the term for which the Director was appointed until a successor has been appointed and qualified.

SEC. 313. Deputy Director.

(a) Appointment.—The Secretary shall appoint a Deputy Director.

(b) Serving as Acting Director.—During the absence or disability of the Director, the Deputy Director shall serve as the acting Director and shall possess the powers and perform the duties attached by law to the office of the Director.

SEC. 314. Compensation.

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

SEC. 315. Effective Date.

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

Subtitle B—Powers and Duties Transferred to National Bank Supervisor

SEC. 321. Powers and Duties Transferred.

(a) Comptroller of the Currency.—

1. Transfer of functions.—All functions of the Comptroller of the Currency are transferred to the Director of the National Bank Supervisor.

2. Director’s authority.—The Director of the National Bank Supervisor shall
succeed to all powers, authorities, rights, and duties that were vested in the Comptroller of the Currency under Federal law, including the National Bank Act, on the day before the transfer date.

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

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

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

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

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

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

(c) **TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.**—Nothing in subsection (a) or (b) shall affect the transfer of consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial
Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

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

## SEC. 322. TRANSFER DATE.

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

(b) **EXTENSION PERMITTED.**—

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

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

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

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

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

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

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

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

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

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

SEC. 324. OFFICE OF THRIFT SUPERVISION ABOLISHED.

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

SEC. 325. SAVINGS PROVISIONS.

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

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

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Comptroller of the Currency or the Office of the Comptroller of the Currency before the transfer date, except that the Director of the
National Bank Supervisor or the National Bank Supervisor shall be substituted for the
Comptroller of the Currency or the Office of the Comptroller of the Currency, as the case
may be, as a party to any such action or proceeding as of the transfer date.

(b) OFFICE OF THRIFT SUPERVISION.—

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

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

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

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

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

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

(A) the National Bank Supervisor, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Director of the National Bank Supervisor, until modified, terminated, set aside, or superseded in
accordance with applicable law by the National Bank Supervisor, by any court of
competent jurisdiction, or by operation of law; or

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

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—

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

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

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

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

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

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

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

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of the
Comptroller of the Currency or the Office of Thrift Supervision, which that agency, in
performing functions transferred by this title, has proposed before the transfer date but
has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the National Bank Supervisor.

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

Subtitle C—Operations of National Bank Supervisor

SEC. 331. REGULATIONS AND ORDERS.

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

SEC. 332. DELEGATION OF AUTHORITY.

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

SEC. 333. PERSONNEL.

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

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

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

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

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

SEC. 334. FUNDING.

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

(1) ASSESSMENTS, FEES AND OTHER CHARGES.—

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

(C) REGULATIONS.—

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

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

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

(ii) FEE FORMULAS TO COVER EXAMINATION AND PROCESSING COSTS.—The regulations may establish formulas to determine a fee or schedule of fees to cover the cost of examinations and also cover the cost
of processing applications, filings, notices, and requests for approvals by
the Director or the Director’s designee.

(b) NATIONAL BANK SUPERVISOR FUND.—

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

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

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

(4) INVESTMENT.—

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

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

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

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds transferred to, deposited into, or credited to the Fund
shall be immediately available to the National Bank Supervisor, and remain available
until expended, to pay the expenses of the National Bank Supervisor in carrying out its
duties and responsibilities. The compensation of the Director and other employees of the
National Bank Supervisor and all other expenses thereof may be paid from assessments
levied under this section and under powers transferred to the Director by this title.

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

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

SEC. 335. CONTRACTING AND LEASING AUTHORITY

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

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

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

without regard to the Federal Property and Administrative Services Act of 1949 and other laws
of a similar type governing the procurement of goods and services or the acquisition or
disposition of personal or real property (or property interest) by executive agencies.
SEC. 336. EFFECTIVE DATE.

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

Subtitle D—Transitional Provisions

SEC. 341. INTERIM AUTHORITY OF NATIONAL BANK SUPERVISOR.

Before the transfer date, the National Bank Supervisor shall—

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

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

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

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

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

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

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

(a) IN GENERAL.—When requested by the National Bank Supervisor to do so before the
transfer date, the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall each—

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

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

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

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

SEC. 343. INTERIM AUTHORITY OF THE SECRETARY.

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

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

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

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

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

SEC. 344. EMPLOYEES TRANSFERRED.

(a) IN GENERAL.—

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

(2) OTS EMPLOYEES.—

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

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—

The Director of the Office of Thrift Supervision, the Comptroller of the Currency, the Chairperson of the Corporation, and, when appointed, the Director of the National Bank Supervisor, shall—

(i) jointly estimate—

(I) the number of Federal savings associations that will
convert to a national bank as provided for in section 351, and
thereafter will be supervised and regulated by the National Bank
Supervisor; and

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

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

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

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

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

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

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

(4) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

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

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

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

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

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

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of
employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

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

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

(e) EQUAL STATUS AND TENURE POSITIONS.—

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

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

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

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

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

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

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

(h) PAY.—

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

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

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee’s consent.

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

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

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

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

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

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

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the transfer date, retain membership in any other employee
benefit program of the agency from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the transfer date.

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

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

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

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

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

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the National Bank Supervisor or the
Corporation decides not to continue participation in any long term care insurance program of an agency from which employees transferred, a transferred employee who is a member of such a program may, before the decision of the National Bank Supervisor or the Corporation takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in Part 875, title 5, Code of Federal Regulations).

(D) Employee’s contribution.—

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

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

(iii) Funds transfer.—The National Bank Supervisor or the Corporation shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the National Bank Supervisor or the Corporation and the Office of Management and Budget, to be necessary to reimburse the Fund...
for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (i).

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

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

(ii) EMPLOYEE’S CONTRIBUTION.—

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

(II) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of the Comptroller of the Currency or the Office of Thrift Supervision are providing on the date of enactment of this Act and the benefits provided by this section shall be paid by the Director of the National Bank Supervisor or the Corporation.
(III) FUNDS TRANSFER.—The National Bank Supervisor or the Corporation shall transfer to the Employees’ Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the National Bank Supervisor or the Corporation and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under subclause (I).

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

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

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the National Bank Supervisor and the Corporation—
(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

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

SEC. 345. PROPERTY TRANSFERRED.

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

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

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

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

SEC. 346. FUNDS TRANSFERRED.

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

SEC. 347. INCIDENTAL TRANSFERS.

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

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

SEC. 348. DISPOSITION OF AFFAIRS.

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

(1) shall, solely for the purpose of winding up the affairs of their respective agencies related to any function transferred to the National Bank Supervisor or the
Corporation by this title—

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

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

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

(b) AUTHORITY AND STATUS OF EXECUTIVES.—

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

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

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

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

SEC. 349. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing
support services to the Office of the Comptroller of the Currency or the Office of Thrift Supervision in connection with functions to be transferred to the National Bank Supervisor, shall—

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

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

Subtitle E—Termination of Federal Thrift Charter

SEC. 351. TERMINATION OF FEDERAL SAVINGS ASSOCIATIONS; TREATMENT OF STATE SAVINGS ASSOCIATIONS AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW

(a) ELECTION BY SAVINGS ASSOCIATION REQUIRED.—

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

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

(A) the savings association shall provide the Office of the Comptroller of the Currency with such relevant supporting information as that Office may reasonably request; and
(B) the Office of the Comptroller shall issue a national bank or mutual national bank charter, as appropriate, not later than the end of the 1-year period beginning on the date of enactment of this Act.

(3) Conversion to a State Bank.—If a savings association gives notice under paragraph (1) of its intention to convert to a State bank, the savings association shall apply for a State bank charter in compliance with applicable State law.

(4) Conversion to a State Savings Association.—If a Federal savings association gives notice under paragraph (1) of its intention to convert to a State savings association, the Federal savings association shall apply for a State savings association charter in compliance with applicable State law.

(5) Conversion to National Bank by Operation of Law.—If a Federal savings association does not comply with paragraph (1) or if its application to become a State-chartered bank has not been approved by the State by the day before the end of the 1-year period beginning on the date of enactment of this Act, the Federal savings association shall—

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

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

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

(6) Conditions on New Charters.—The Office of the Comptroller of the
Currency and the appropriate State banking agency may impose such conditions in
connection with the issuance of new charters, including charters issued under paragraph
(5), as they determine in their sole discretion, to be appropriate to assure the safe and
sound operation of the newly chartered bank.

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

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

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

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

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

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

“(B) is incorporated under the laws of any State or which is operating
under the Code of Law for the District of Columbia,
including any cooperative bank or other unincorporated bank the deposits of which were
insured by the Corporation on the day before the date of enactment Financial Institutions
Reform, Recovery, and Enforcement Act of 1989.”.

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

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

SEC. 352. TRANSITION PROVISIONS FOR ACTIVITIES OF SAVINGS
ASSOCIATIONS THAT CONVERT INTO OR BECOME TREATED
AS BANKS.

(a) NONCONFORMING ACTIVITIES AND ASSETS.—

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

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

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

(B) grant no more than two 1-year extensions of the period described in
as the agency determines, in its sole discretion, to be appropriate to assure the safe and sound operation of the bank.

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

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

<table>
<thead>
<tr>
<th>Period:</th>
<th>Permissible percentage increase:</th>
</tr>
</thead>
<tbody>
<tr>
<td>During the 1-year period beginning on the date of enactment of this Act.</td>
<td>Permissible limit under Home Owners’ Loan Act as of the date of enactment of this Act.</td>
</tr>
<tr>
<td>During the 1-year period beginning 1 year after the date of enactment of this Act.</td>
<td>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.</td>
</tr>
<tr>
<td>During the 1-year period beginning 2 years after the date of enactment of this Act.</td>
<td>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.</td>
</tr>
<tr>
<td>During the 1-year period beginning 3 years after the date of enactment of this Act.</td>
<td>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.</td>
</tr>
<tr>
<td>During the 1-year period beginning 4 years after the date of enactment of this Act.</td>
<td>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.</td>
</tr>
<tr>
<td>After 5 years from the date of enactment.</td>
<td>The maximum amount permitted for national banks.</td>
</tr>
</tbody>
</table>
(d) PHASE-IN SCHEDULE BASED ON OTHER LIMITATIONS.—For all other activities limited in amount by statute, a Federal savings association or State savings association that converts to a national bank or a State bank pursuant to this title may increase the level of such activities to a level permitted by the appropriate Federal banking agency by regulation or order, which shall include any applicable schedule or conditions.

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

SEC. 353. ADDITIONAL TRANSITIONAL PROVISIONS FOR MUTUAL SAVINGS ASSOCIATIONS.

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

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

“SEC. 5133A. MUTUAL NATIONAL BANKS.

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

“(b) REGULATIONS.—

“(1) TRANSITION RULES.—National banks organized in the mutual form shall be
subject to the regulations of the Director of the Office of Thrift Supervision governing
corporate organization, governance, and conversion of mutual institutions, as in effect on
the date of enactment of the Federal Depository Institutions Supervision and Regulation
Improvements Act of 2009, including parts 543, 544, 546, 563b, and 563c of chapter V of
title 12 of the Code of Federal Regulations (as in effect on that date), during the 3-year
period beginning on the date of enactment of the Federal Depository Institutions
Supervision and Regulation Improvements Act of 2009.

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

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

“(c) CONVERSIONS.—

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

“(2) CONVERSION TO STATE BANKS.—Any national mutual bank may convert to a
State bank charter in accordance with regulations prescribed by the Director of the
National Bank Supervisor and applicable State law.”.

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

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

(b) BRANCHES.—

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

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

and

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

or, pursuant to the amendments made by this subsection, is treated as a bank as of
that date under the Federal Deposit Insurance Act,
and any depository institution or bank holding company that acquires that depository institution, may continue, after the depository institution becomes or commences to be treated as a bank, to operate any branch or agency that the savings association was operating as a branch or agency or was in the process of establishing as a branch or agency on the date of enactment of this Act.

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

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

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

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

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

(D) had received authority from the appropriate Federal banking agency to
establish the branch in connection with the assumption of liabilities or an
acquisition of an insured depository institution pursuant to subsection (f) or (k) of
section 13 of the Federal Deposit Insurance Act or such 408(m) of the National
Housing Act (as in effect before the date of the enactment of the Financial
Institutions Reform, Recovery, and Enforcement Act of 1989); or

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

(i) had made a significant financial commitment; and

(ii) had taken legally binding action or incurred a contractual

obligation,

in furtherance of the establishment of the branch or agency.

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

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

“(e) TRANSITION PROVISION FOR SAVINGS ASSOCIATIONS CONVERTING TO NATIONAL

BANKS.—In the case of any depository institution which, as of the date of enactment of this Act,
is a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (as in
effect on that date)) and becomes a national bank on or before 1 year from the date of enactment
of the Federal Depository Institutions Supervision and Regulation Improvements Act of 2009,
any loan, or legally binding commitment to make a loan, made or entered into by that institution
that is outstanding on the date the institution becomes a national bank may continue to be held
without regard to any limitation contained in this section during the 3-year period beginning on
the date of enactment of the Federal Depository Institutions Supervision and Regulation
Improvements Act of 2009.”.

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

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

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

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

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

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

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

(C) cause that national or State bank to be in default or breach under any
provision of the contract, agreement, document, or instrument,

the national or State bank shall be deemed to be, and treated as, a savings association for

purposes of the contract, agreement, document, or instrument.

Subtitle F—Conforming Amendments

CHAPTER 61—CONFORMING AMENDMENTS TO

FEDERAL DEPOSIT INSURANCE ACT

SEC. 361. AMENDMENT TO SECTION 2.

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

(1) in subsection (a)(1)—

(A) in subparagraph (A), by striking “Comptroller of the Currency” and

inserting “Director of the National Bank Supervisor”;

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

Supervision” and inserting “Chairman of the Board of Governors of the Federal

Reserve System, or such other member of the Board of Governors as the

Chairman of the Board of Governors shall designate”;

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

“(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the

Director of the National Bank Supervisor and pending the appointment of a successor, or

during the absence or disability of the Director, the acting Director of the National Bank

Supervisor shall be a member of the Board of Directors in the place of the Director.”; and

(3) in subsection (f)(2), by striking “Office of the Comptroller of the Currency or

of the Office of Thrift Supervision” and inserting “National Bank Supervisor or

Department of the Treasury”.
SEC. 362. AMENDMENTS TO SECTION 3.

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

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

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

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

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

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

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

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

(D) by striking paragraph (4).

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

SEC. 363. AMENDMENTS TO SECTION 7.

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

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) in the first sentence, by striking “Comptroller of the Currency,
the Director of the Office of Thrift Supervision,” and inserting “Director of the National Bank Supervisor,”;

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

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

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

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

and

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

SEC. 364. AMENDMENTS TO SECTION 8.

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

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

(A) by striking “Director of the Office of Thrift Supervision” each place it
appears and inserting “Director of the National Bank Supervisor”;

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

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

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

(4) in subsection (o)—

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

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

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

SEC. 365. AMENDMENTS TO SECTION 11. 

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

(1) in subsection (c)—

(A) in paragraph (6)—

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

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

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

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

(4) in subsection (o)—

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

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

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

SEC. 365. AMENDMENTS TO SECTION 11. 

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

(1) in subsection (c)—

(A) in paragraph (6)—

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

(ii) in subparagraph (A), by striking “Director of the Office of
Thrift Supervision” and inserting “Director of the National Bank Supervisor”; (iii) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; (2) in subsection (d)— (A) in paragraph (2)(F)(i), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; (B) in paragraph (17)(A)— (i) by striking “Comptroller of the Currency or the Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; and (B) by striking “appropriate”; (C) in paragraph (18)(B), by striking “Comptroller of the Currency or the Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; (3) in subsection (m)— (A) in paragraph (9), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; (B) in paragraph (16), by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; (C) in paragraph (18), by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”;
(4) in subsection (n)—

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

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

(C) in paragraph (4)—

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

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

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

SEC. 366. AMENDMENTS TO SECTION 13.

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

SEC. 367. AMENDMENTS TO SECTION 18.

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

(1) in subsection (c)—

(A) in paragraph (2)—

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

(ii) in subparagraph (B), by adding “and” at the end after the semi-colon;
(iii) in subparagraph (C), by striking “; and” and inserting a period;

and

(iv) by striking subparagraph (D); and

(2) in subsection (g)(1), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”;

(3) in subsection (i)—

(A) in paragraph (2)—

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

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

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

(4) in subsection (m)—

(A) in paragraph (1)—

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

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

(B) in paragraph (2)—

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

(ii) in subparagraph (B), by striking “Director of the Office of
Thrift Supervision” each place it appears and inserting “Director of the National Bank Supervisor”

(C) in paragraph (3)—

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

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

SEC. 368. AMENDMENTS TO SECTION 28.

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

(1) in subsection (e)—

(A) in paragraph (2)—

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

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

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

(B) in paragraph (3)—

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

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

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

CHAPTER 52—CONFORMING AMENDMENTS TO OTHER BANKING STATUTES

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

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

(1) in subsection (a)—

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

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

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

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

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

(1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Director of the National Bank Supervisor “; and

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

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

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

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

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

“Director”;

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

“Director”;

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

“Director”; and

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

“Director”.

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

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

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

“Director”;

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

“Director “;

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

“Director”; and

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

“Director “.

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

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

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

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

(12 U.S.C. 215a-2) is amended—

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

“Director”; and

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

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

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

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

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

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

SEC. 376. AMENDMENTS TO THE ACT OF MARCH 9, 1933.
(a) **AMENDMENTS TO SECTION 4.**—Section 4(b)(1) of the Act of March 9, 1933 (12 U.S.C. 95(b)(1)) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

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

(1) in the first sentence—

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

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

(2) in the second sentence—

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

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

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

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

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

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

(2) in subsection (b)—

(A) in the third sentence, by striking “Comptroller of the Currency” and...
inserting “Director of the National Bank Supervisor”; and

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

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

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

(1) in the last sentence by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; and

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


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

(1) in subsection (a)—

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

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

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

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

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

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

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

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

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

(6) in subsection (k)—

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

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

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

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

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

(1) by striking “Comptroller of the Currency,” and inserting “Director of the National Bank Supervisor and”; and
(2) by striking “, and the Director of the Office of Thrift Supervision”.

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

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

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

(2) by striking paragraph (1); and

(3) by redesignating paragraph (2) as paragraph (1).

SEC. 381. AMENDMENTS TO THE BANK CONSERVATION ACT.

(a) AMENDMENT TO SECTION 202.—Section 202 of the Bank Conservation Act (12 U.S.C. 202) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(b) AMENDMENTS TO SECTION 203.—Section 203 of the Bank Conservation Act (12 U.S.C. 203) is amended—

(1) in subsection (a), by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; and

(2) in subsection (b)—

(A) by striking “Comptroller” each place it appears and inserting
“Director”;

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

(3) in subsection (c), by striking “Comptroller” each place it appears and inserting

“Director “;

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

“Director “;

(5) in subsection (e)—

(A) by striking “Comptroller” and inserting “Director”; and

(B) by striking “Comptroller’s” and inserting “Director’s”.

(c) AMENDMENTS TO SECTION 204.—Section 204 of the Bank Conservation Act (12 U.S.C. 204) is amended—

(1) in the first sentence, by striking “Comptroller of the Currency” and inserting

“Director of the National Bank Supervisor”; and

(2) in the second sentence, by striking “Comptroller” and inserting “Director”.

(d) AMENDMENTS TO SECTION 205.—Section 205 of the Bank Conservation Act (12 U.S.C. 205) is amended—

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

“Director”;

(2) in subsection (b), by striking “Comptroller” and inserting

“Director”; and

(3) in subsection (c), by striking “Comptroller” and inserting

“Director”.

(e) AMENDMENTS TO SECTION 206.—Section 206 of the Bank Conservation Act (12
U.S.C. 206) is amended—

(1) in subsection (a), by striking “Comptroller” and inserting “Director”; 

(2) in subsection (b)—

(A) in the heading, by striking “COMPTROLLER” and inserting “DIRECTOR”; 

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

(3) in subsection (c), by striking “Comptroller” each place it appears and inserting “Director”; 

(4) in subsection (d)—

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

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

(f) AMENDMENT TO SECTION 209.—Section 209(c) of the Bank Conservation Act (12 U.S.C. 209(c)) is amended by striking “Comptroller” each place it appears and inserting “Director”. 

(g) AMENDMENT TO SECTION 210.—Section 210 of the Bank Conservation Act (12 U.S.C. 210) is amended by striking “Comptroller of the Currency” and inserting “Director of the National bank Supervisor.” 

(h) AMENDMENTS TO SECTION 211.—Section 211 of the Bank Conservation Act (12 U.S.C. 211) is amended—

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

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

(2) in subsection (b), by striking “Comptroller” and inserting “Director”.

SEC. 382. AMENDMENTS TO THE BANK ENTERPRISE ACT OF 1991.

(a) AMENDMENTS TO SECTION 232.—Subsection 232(a) of the Bank Enterprise Act of
1991 (12 U.S.C. 1834(a)) is amended—

(1) in the heading, by striking “FEDERAL RESERVE BOARD” and inserting “THE
DIRECTOR OF THE NATIONAL BANK SUPERVISOR”;

(2) in paragraph (1), by striking “Board of Governors of the Federal Reserve
System,” and inserting “Director of the National Bank Supervisor”;

(3) in paragraph (2), by striking “Board” each place it appears and inserting
“Director”

(3) in paragraph (3)—

(A) by amending subparagraph (A) to read as follows:

“(A) DIRECTOR OF THE NATIONAL BANK SUPERVISOR.—The term
‘Director’ means the Director of the National Bank Supervisor”;

(B) in subparagraph (C), by striking “Board” and inserting “Director”.

SEC. 383. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) AMENDMENTS TO SECTION 2.—Section 2 of the Bank Holding Company Act of 1956
(12 U.S.C. 1841) is amended by deleting subsections (i), (j) and (l) and re-lettering the remaining
subsections accordingly.

(b) AMENDMENTS TO SECTION 3.—Section 3 of the Bank Holding Company Act of 1956
(12 U.S.C. 1842) is amended—

(1) in subsection (b)—

(A) in the heading by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; 
(B) in paragraph (1) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; 

(c) AMENDMENTS TO SECTION 4.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(A) in subsection (f) paragraph (12)(A)—

(i) by striking “Resolution Trust Corporation”; and  
(ii) by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor “. 

(d) AMENDMENTS TO SECTION 5.—Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended in subsection (e), in paragraph (1) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”. 

(e) AMENDMENTS TO SECTION 11.—Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is amended in the third sentence, by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”. 

SEC. 384. AMENDMENTS TO THE BANK HOLDING COMPANY ACT

AMENDMENTS OF 1970. 

SEC. 385. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

(a) AMENDMENT TO TITLE.—The title of the Bank Protection Act of 1968 is amended to read as follows:

“AN ACT To provide security measures for banks and other financial institutions.”.

(b) AMENDMENT TO SECTION 2.—Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) in paragraph (1) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor.”;

(2) in paragraph (2), by inserting “and” at the end;

(3) in paragraph (3), by striking “, and” at the end of and inserting a period; and

(4) by striking paragraph (4).

SEC. 386. AMENDMENTS TO THE BANK SERVICE CORPORATION ACT.

(a) AMENDMENTS TO SECTION 1.—Section 1(b) of the Bank Service Corporation Act (12 U.S.C. 1861(b)) is amended—

(1) in paragraph (4), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National bank Supervisor”;

(2) by striking “, the Federal Savings and Loan Insurance Corporation,”.

SEC. 387. AMENDMENTS TO THE BANKING ACT OF 1933.

(a) AMENDMENT TO SECTION 22.—Section 22 of the Banking Act of 1933 (12 U.S.C. 64a) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(b) AMENDMENTS TO SECTION 29.—Section 29 of the Banking Act of 1933 (12 U.S.C. 197a) is amended—
(1) in the first sentence—

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

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

(C) by striking “his” and inserting “Director”; and

(2) in the second sentence, by striking “Comptroller” each place it appears and inserting “Director”.

(c) AMENDMENTS TO SECTION 31.—Section 31 of the Banking Act of 1933 (12 U.S.C. 71a) is amended in the second sentence, by striking “Comptroller of the Currency, the said Comptroller” and inserting “Director of the National Bank Supervisor.

SEC. 388. AMENDMENTS TO THE BANKING ACT OF 1935.

Section 345 of the Banking Act of 1935 (12 U.S.C. 51b-1) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.


Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

(1) in subsection (1)—

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

(B) by striking paragraph (D); and

(2) in subsection (3) by “, savings bank, savings and loan association”.

SEC. 390. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.
(a) AMENDMENTS TO SECTION 202.—Subsection 202 of the Depository Institution Management Interlocks Act (12 U.S.C. 3201) is amended—

1. by striking paragraph (1) and inserting the following—

“(1) the term ‘depository institution’ means a commercial bank, a trust company or a credit union.”

2. in paragraph (2), by placing a semi-colon after “thereof” and striking “, or a savings and loan holding company as defined in section 1730a(a)(1)(D) of this title;”; and

3. in paragraph (3)(A), by striking “or in section 1730a(a)(1)(H) of this title in the case of a savings and loan holding company”

(b) AMENDMENTS TO SECTION 205.—Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended—

1. by striking paragraph (8); and

2. by striking paragraph (9)

(c) AMENDMENT TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

1. in paragraph (1) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

2. by striking paragraph (4); and

3. by renumbering paragraphs (5) and (6) and paragraphs (4) and (5), respectively.

(d) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

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

(2) by striking paragraph (4);

(3) by renumbering paragraph (5) and paragraph (4).

(f) AMENDMENT TO SECTION 210.—Subsection 210(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3208(a)) is amended by striking “his” and inserting “his or her”.

SEC. 391. AMENDMENTS TO THE EMERGENCY HOMEOWNER’S RELIEF ACT.

Section 110 of the Emergency Homeowner’s Relief Act (12 U.S.C. 2709) is amended—

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

(2) by striking the “Federal Home Loan bank Board” and inserting “Federal Housing Finance Agency”; and

(3) by striking “the Federal Savings and Loan Insurance Corporation”.

SEC. 392. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended in subsection (a)—

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

(2) by striking paragraph (2); and

(3) by renumbering paragraphs (3) through (9) as paragraphs (2) through (8).

SEC. 393. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) AMENDMENTS TO SECTION 206.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended—
(1) in subsection (g)(7)—

(A) in subparagraph (A)—

(i) in clause (vi)—

(I) by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”;

(II) by striking “and” after the semi-colon;

(III) striking the semi-colon and inserting a period; and

(ii) by striking clause (vii)(2) in subparagraph (D)—

(I) in clause (iv), by striking at the end “; and” and inserting a period; and

(II) striking clause (v).

SEC. 394. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) Amendment to Section 1002.—Section 1002 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301) is amended—

(1) by striking “Office of the Comptroller of the Currency” and inserting “National Bank Supervisor”; and

(2) striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

(b) Amendment to Section 1003.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

(1) in paragraph (1)—

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

(B) by striking “the Office of Thrift Supervision,”;

(2) by striking paragraph (3) and inserting the following—

“(3) the term ‘financial institution’ means a bank, a trust company, a

homestead association, a cooperative bank, or a credit union.”

(c) AMENDMENTS TO SECTION 1004—Section 1004 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303) is amended in subsection (a)—

(1) in paragraph (1) by striking “Comptroller of the Currency,” and inserting

“Director of the National Bank Supervisor,”;

(2) by striking paragraph (4); and

(3) by renumbering paragraph (5) as paragraph (4).

SEC. 395. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) AMENDMENTS TO SECTION 18.—Subsection 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is amended—

(1) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Director of the National Bank Supervisor”;  

(2) in paragraph (1)(B), by striking “and the agencies under its administration or supervision”;

(3) in paragraph (5), by striking “and such agencies”.

(b) AMENDMENTS TO SECTION 21A.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is repealed.

SEC. 396. AMENDMENTS TO THE FEDERAL RESERVE ACT.

(a) AMENDMENTS TO SECTION 2.—The sixth undesignated paragraph of section 2 of the
Federal Reserve Act (12 U.S.C. 501a) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor “.

(b) AMENDMENTS TO SECTION 4.—Section 4 of the Federal Reserve Act is amended—

(1) in the first undesignated paragraph (omitted from the United States Code), by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; 

(2) in the third undesignated paragraph (omitted from the United States Code)—

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

(B) by striking “his office” and inserting “the Director’s office”;

(3) in the first sentence of the fourth undesignated paragraph (12 U.S.C. 341), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor “; and

(4) in the fifth undesignated paragraph (12 U.S.C. 341), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”. 

(c) AMENDMENT TO SECTION 6.—The first sentence of the second undesignated paragraph of section 6 of the Federal Reserve Act (12 U.S.C. 288) is amended by striking “Comptroller of the Currency may, if he deems it advisable,” and inserting “Director of the National Bank Supervisor may, if the Director deems it advisable,”.

(d) AMENDMENTS TO SECTION 9.—Section 9 of the Federal Reserve Act is amended—

(2) in the sixth undesignated paragraph (12 U.S.C. 324)—

(A) in the first sentence by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”. 
(e) AMENDMENTS TO SECTION 11.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended in subsection (a) (2)(B)—

(1) in clause (i) by inserting “and” after “nonmember banks,,” and by deleting “and mutual savings banks,”;

(2) by striking clause (iii) and renumbering clause (iv) as clause (iii).

(f) AMENDMENT TO SECTION 13.—The eleventh undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 92) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(g) AMENDMENTS TO SECTION 19.—Section 19 of the Federal Reserve Act (12 U.S.C. 461(b)) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A)—

(i) by striking clauses (ii), (iii) (v) and (vi); (ii) by renumbering the remaining clauses as (ii) and (iii); and (iii) in redesignated clause (iii), striking “clauses (i) through (vi) and inserting “in this subsection.”.

(B) in paragraph (B) by striking “other than a mutual savings bank or a savings bank as defined in such section”; and

(C) in paragraph (F) striking “the Director of the Office of Thrift Supervision” and inserting “the Director of the National Bank Supervisor”.

(2) in paragraph (4)(B), by striking “the Director of the Office of Thrift Supervision” and inserting “the Director of the National Bank Supervisor”.

(h) AMENDMENT TO SECTION 24.—Subsection 24(a) of the Federal Reserve Act (12
U.S.C. 371(a)) is amended—

(1) in the heading by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

(2) in subsection (a) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor “.

(i) AMENDMENTS TO SECTION 24A.—Section 24A of the Federal Reserve Act (12 U.S.C. 371d) is amended in subsection (a)—

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

(2) in paragraph (3) subparagraph (B) clause (iii) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(j) AMENDMENTS TO SECTION 25.—Section 25 of the Federal Reserve Act (12 U.S.C. 602) is amended in the first undesignated paragraph by striking “Comptroller of the Currency” and inserting “Director of National Bank Supervisor”.

(k) AMENDMENTS TO SECTION 25A.—Section 25A of the Federal Reserve Act (12 U.S.C. 611-631) is amended—

(1) in section 25A(16)—

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

(B) in subsection (b) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

(l) AMENDMENTS TO SECTION 29.—Section 29 of the Federal Reserve Act (12 U.S.C. 504) is amended—

504) is amended—
(1) in subsection (e), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; and

(2) in subsection (i), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

SEC. 397. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) AMENDMENTS TO SECTION 302.—Section 302(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1467a nt.) is amended by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”.

(b) AMENDMENT TO SECTION 305.—Section 305 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1464 nt.) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

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

(2) in subsection (c)—

(A) in paragraph (1), by striking “appropriate Federal banking agency” and inserting “Director of the National Bank Supervisor”; and

(B) in paragraph (2), by striking “appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Corporation Act)” and inserting “Director of the National Bank Supervisor”.

(c) AMENDMENT TO SECTION 308.—Subsection 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 nt.) is amended by striking
“Director of the Office of Supervision” and Bank Supervisor of and inserting “Director of the National Bank Supervisor”.

(d) AMENDMENTS TO SECTION 402.—Section 402 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 nt.) is amended—

(1) in subsection (a), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor“;

(2) in subsection (b), by striking “Director of the Office of Thrift Supervision” and inserting “Chairperson of the Director of the National Bank Supervisor“;

(3) in subsection (e)—

(A) in paragraph (1), by striking “the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor“;

(B) in paragraph (2), by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Director of the National Bank Supervisor“;

(C) in paragraph (3), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; and

(D) in paragraph (4), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor“.

(e) AMENDMENT TO SECTION 1103.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended by striking “and the Resolution Trust Corporation”.

(f) AMENDMENTS TO SECTION 1205.—Subsection 1205(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 nt.) is amended—
(1) in paragraph (1)—

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

(B) by striking subparagraph (D);

(C) by redesignating subparagraphs (E) and (F) as paragraphs (D) and (E), respectively;

(2) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”;

(3) in paragraph (5), by striking “through (E)” and inserting “through (D)”.

(g) Amendments to Section 1206.—Section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended—

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

(2) by striking “the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation”;

(3) by inserting “and” after “the Federal Housing Finance Board” and before “the Farm Credit Administration”; and

(4) by striking “, and the Office of Thrift Supervision”.

(h) Amendments to Section 1216.—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;
(B) by striking paragraphs (2), (5), and (6); and

(C) by redesignating paragraphs (3), and (4), as paragraphs (2), and (3), respectively;

(2) in subsection (c)—

(A) by striking “Comptroller of the Currency, the Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor and”;

and

(B) by striking “the Thrift Depositor protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation”.

(3) in subsection (d)—

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

(B) by striking paragraphs (3), (5) and (6); and

(C) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.


(a) AMENDMENTS TO SECTION 114.—Section 114(a) of the Gramm-Leach-Bliley Act (12 U.S.C. 1828a(a)) is amended—

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

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

(3) striking “Comptroller” and inserting “Director”; and
(b) AMENDMENTS TO SECTION 302.—Section 302(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6712) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

SEC. 399. AMENDMENTS TO THE HOME OWNERS’ LOAN ACT.

(a) AMENDMENT TO SECTION 1.—Section 1 of the Home Owners’ Loan Act (12 U.S.C. 1461) is amended by striking “Director of the Office of Thrift Supervision” in the Table of Contents and inserting “Director of the National Bank Supervisor.”.

(b) AMENDMENTS TO SECTION 2.—Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is amended—

(1) in paragraph (1) by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; and

(2) by striking paragraphs (3) through (5) and redesignating paragraphs (6) through (9) as paragraphs (3) through (6); and

(3) in redesignated paragraph (4), by striking “Office of the Comptroller of the Currency” and inserting “National Bank Supervisor”.

(c) AMENDMENTS TO SECTION 3.—Section 3 of the Home Owners’ Loan Act (12 U.S.C. 1462a) is amended—

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

(2) by amending subsection (a) to read as follows:

“(a) ESTABLISHMENT OF NATIONAL BANK SUPERVISOR.—There is established the National Bank Supervisor, which shall be a bureau in the Department of the Treasury.”;

(3) by amending subsection (b)(1) to read as follows:
“(1) IN GENERAL.—There is established the position of the Director of the National Bank Supervisor, who shall be the head of the National Bank Supervisor and shall be subject to the general oversight of the secretary of the Treasury.”;

(4) in subsection (e)—

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

(B) by amending paragraph (1) to read as follows—

“(1) were vested in the Office of Thrift Supervision or its Director on the day before the date of enactment of the Federal Depository Supervision and Regulation Improvements Act of 2009.”.

(5) in subsection (f), by striking “Office” each place it appears and inserting “Director of the National Bank Supervisor”;

(6) in subsection (g),

(A) by striking “(1)”;

(B) by striking “; and” and inserting a period; and

(C) by striking “Office” each place it appears and inserting “National Bank Supervisor”; and

(D) by striking paragraph (2);

(7) in subsection (h)—

(C) in paragraph (1)—

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

(ii) by striking “notwithstanding section 301(f) of title 31, United
States Code”;

(D) in paragraph (3), by striking “Office” each time it appears and inserting “national Bank Supervisor”.

(E) by amending paragraph (4) to read as follows:

“(4) DELEGATION OF AUTHORITY.—

“(A) IN GENERAL.—The Director of the National Bank Supervisor may delegate to any employee, representative, or agent any power of the Director of the National Bank Supervisor.”

(8) in subsection (j), by deleting “Office of Thrift Supervision” and inserting “National Bank Supervisor”.

(d) AMENDMENTS TO SECTION 4.—Section 4 of the Home Owners’ Loan Act (12 U.S.C. 1463) is amended—

(1) in subsection (a), in paragraph (2), by striking “or the Office”;

(2) in subsection (b)(2), by striking subsection (C); and

(3) in subsection (c), by striking “Comptroller of the Currency” and inserting “National Bank Supervisor”.

(e) AMENDMENTS TO SECTION 5.—Section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) is amended—

(1) in subsection (a), by striking “thrift institutions” and inserting “federal savings associations”;

(2) in subsection (d), paragraph (2)—

(A) in paragraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”;
(B) in paragraph (E)(ii)—

(i) in the title, by striking “or RTC”; and

(ii) by striking “or the Resolution Trust Corporation, as appropriate,”;

(C) in paragraph (B)—

(i) in the title, by striking “or RTC”; and

(ii) by striking “or the Resolution Trust Corporation”; and

(f) AMENDMENTS TO SECTION 10.—Section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a) is repealed.

SEC. 399A. AMENDMENTS TO THE HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the introductory text by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor “.


(a) AMENDMENTS TO SECTION 543.—Section 543 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 nt.) is amended—

(1) in subsection (c)(1)—

(A) by amending subparagraph (C) to read as follows:

“(C) Director of the National Bank Supervisor”; and

(B) by striking subparagraphs (D) through (F); and

(C) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respectively;
(2) in subsection (f)—

(A) in paragraph (2)—

(i) by striking “Comptroller of the Currency, the Office of Thrift Supervision, “Director of the National Bank Supervisor”; and

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

(B) in paragraph (3)—

(i) by striking “the Office of Thrift Supervision,” Director of the National Bank Supervisor”; and

(ii) in subparagraph (D), by striking “Office of Thrift Supervision, and inserting “Director of the National Bank Supervisor “.

(b) AMENDMENT TO SECTION 1315.—Section 1315(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 4515(b)) is amended by striking “the Director of the National Bank Supervisor ,”.

(c) AMENDMENT TO SECTION 1317.—Section 1317(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(c)) is amended—

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

(2) by striking “or the Director of the Office of Thrift Supervision” and inserting “or the Director of the National Bank Supervisor”.

(d) AMENDMENT TO SECTION 1542.—Section 1542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1831m) is amended

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)—
(A) by striking “his” and inserting “Director”; and
(B) by striking “he” and inserting “Director”; and
(6) in subsection (j)(1), by striking “he” and inserting “Director”.

(c) AMENDMENT TO SECTION 5.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by striking “Comptroller of the Currency” each time it appears and inserting “Director of the National Bank Supervisor”.

(d) AMENDMENT TO SECTION 6.—Section 6 of the International Banking Act of 1978 (12 U.S.C. 3104) is amended by striking “Comptroller” each place it appears and inserting “Director”.

(e) AMENDMENTS TO SECTION 7.—Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by striking “Comptroller of the Currency” each time it appears and inserting “Director of the National Bank Supervisor”.

(f) AMENDMENTS TO SECTION 9.—Section 9 of the International Banking Act of 1978 is amended—

(1) in subsection (a) (12 U.S.C. 601 nt.), by striking “Comptroller” and inserting “Director “; and
(2) in subsection (b)(2) (12 U.S.C. 3106a(2)), by striking “Comptroller” and inserting “Director”.

(g) AMENDMENTS TO SECTION 13.—Section 13 of the International Banking Act of 1978 (12 U.S.C. 3108) is amended—

(1) by striking “Comptroller” each place it appears and inserting “Director”; (2) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(h) AMENDMENT TO SECTION 14.—Section 14 of the International Banking Act of 1978
(12 U.S.C. 36 nt.) is amended by striking “Comptroller” and inserting “Director of the National Bank Supervisor”.

(i) AMENDMENTS TO SECTION 15.—Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended—

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

(2) by striking “Director of the Office of Thrift Supervision” each place it appears; and

(2) in subsection (a), by striking “Comptroller,”.

(j) AMENDMENTS TO SECTION 16.—Section 16 of the International Banking Act of 1978 (12 U.S.C. 3110) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”;

SEC. 399E. AMENDMENTS TO THE NATIONAL HOUSING ACT.

(a) AMENDMENTS TO SECTION 203.—Section 203(s) of the National Housing Act (12 U.S.C. 1709(s)) is amended—

(1) in paragraph (5) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

(2) in paragraph (7), by adding “State savings association” after “State bank”; and

(3) in paragraph (8)—

(i) by striking “or State savings association”;

(ii) by striking “Office of Thrift Supervision” and inserting “National Bank Supervisor”.

SEC. 399F. AMENDMENTS TO THE REVISED STATUTES.
(a) TABLE OF CONTENTS AMENDED.—The table of sections for chapter 9 of title VII of
the Revised Statutes is amended in the item relating to section 330, by striking “Comptroller of
the Currency” and inserting “Director of the National Bank Supervisor”;

(b) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes (12 U.S.C. 1) is
amended to read as follows:

“SEC. 324. There shall be in the Department of the treasury a bureau, the chief officer of
which bureau shall be called the Director of the National Bank Supervisor, and shall perform his
or her duties under the general direction of the Secretary of the Treasury. The Director of the
National Bank Supervisor shall have the same authority over matters within the jurisdiction of
the Director of the National Bank Supervisor as under section 3(b)(3) of the Home Owners’
Loan Act (12 U.S.C. 1462a(b)(3)). The Secretary of the Treasury may not delay the issuance of
any rule or the promulgation of any regulation by the Director of the National Bank Supervisor.”.

(c) AMENDMENT TO SECTION 327A.—Section 327A of the Revised Statutes (12 U.S.C.
4a) is amended by striking “Comptroller of the Currency” and inserting “Director of the National
Bank Supervisor”.

(d) AMENDMENT TO SECTION 328.—Section 328 of the Revised Statutes (12 U.S.C. 8) is
amended to read as follows:

“SEC. 328. The Director of the National Bank Supervisor shall employ, from time to
time, the necessary clerks to discharge such duties as the Director shall direct.”.

(e) AMENDMENT TO SECTION 330.—Section 330 of the Revised Statutes (12 U.S.C. 12) is
amended to read as follows:

“SEC. 330. The Director of National Bank Supervisor shall devise a seal, approved by
the Secretary of the Treasury, which shall be the seal of the Director of the National Bank
Supervisor after the “transfer date” as provided in the Federal Depository Institutions
Supervision and Regulation Improvements Act of 2009, and may be renewed when necessary by
the Director. A description of the Board’s seal shall be filed in the office of the Secretary of
State. The seal devised by the Director of the National bank Supervisor for his office, and
approved by the Secretary of the Treasury, shall continue to be the seal of the Director of the
National Bank Supervisor. “.

(f) AMENDMENT TO SECTION 333.—Section 333 of the Revised Statutes is amended by
striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(g) AMENDMENT TO SECTION 5133.—Section 5133 of the Revised Statutes (12 U.S.C. 21)
is amended—

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

(2) by striking “his” and inserting “the Directors”.

(h) AMENDMENT TO SECTION 5135.—Section 5135 of the Revised Statutes (12 U.S.C. 23)
is amended—

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

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

(i) AMENDMENT TO SECTION 5136.—Section 5136 of the Revised Statutes (12 U.S.C. 24)
is amended—

(1) in the paragraph numbered “Seventh”, by striking “Comptroller of the
Currency” each place it appears and inserting “Director of the National Bank Supervisor;

(2) in the paragraph numbered “Eleventh”—
(A) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; and

(B) by striking “Comptroller” and inserting “Director”.

(j) AMENDMENT TO SECTION 5136A.—Section 5136A(e) of the Revised Statutes (12 U.S.C. 25(a)(c)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(k) AMENDMENT TO SECTION 5137.—Section 5137 of the Revised Statutes (12 U.S.C. 29) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(l) AMENDMENTS TO SECTION 5142.—Section 5142 of the Revised Statutes (12 U.S.C. 57) is amended—

(1) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; 
(2) by striking “his” each place it appears and inserting “the Director”; and 
(3) in the first sentence, by striking “said comptroller” and inserting “the Director”.

(m) AMENDMENT TO SECTION 5143.—Section 5143 of the Revised Statutes (12 U.S.C. 59) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(n) AMENDMENTS TO SECTION 5154.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended—

(1) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor “;
(2) by striking “Comptroller” each place it appears and inserting “Director”; 
(3) in the last sentence—
(A) by striking “his” and inserting “the Director’s”; and
(B) by striking “he” and inserting “the Director”.

(o) Amendment to Section 5155.—Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(p) Amendments to Section 5156A.—Subsection 5156A(b) of the Revised Statutes (12 U.S.C. 215c(b)) is amended—
(1) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; and
(2) in paragraph (2)(B), by striking “Comptroller’s” and inserting “Directors”.

(q) Amendment to Section 5168.—Section 5168 of the Revised Statutes (12 U.S.C. 26) is amended—
(1) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; and
(2) by striking “Comptroller” each place it appears and inserting “Director”.

(r) Amendments to Section 5169.—Section 5169 of the Revised Statutes (12 U.S.C. 27) is amended—
(1) by striking “Comptroller” each place it appears and inserting “Director”;
(2) by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”; 
(3) in subsection (a)—
(A) by striking “appointed by him” and inserting “appointed by the Director”;

(B) by striking “his hand and official seal” and inserting “the Director’s official seal”;

(C) by striking “his certificate” and inserting “the Director’s certificate”;

and

(D) by striking “whenever he has reason” and inserting “whenever the Director of the National Bank Supervisor has reason”.

(s) AMENDMENTS TO SECTION 5191.—Section 5191 of the Revised Statutes (12 U.S.C. 143) is amended—

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

(2) by striking “Comptroller” and inserting “Director”.

(t) AMENDMENT TO SECTION 5192.—Section 5192 of the Revised Statutes (12 U.S.C. 144) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(u) AMENDMENT TO SECTION 5199.—Subsection 5199(b) of the Revised Statutes (12 U.S.C. 60(b)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(v) AMENDMENT TO SECTION 5200.—Section 5200 of the Revised Statutes (12 U.S.C. 84) is amended—

(1) in subsection (b)(1), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;
(2) in subsection (c)(7), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

(3) in subsection (d) by striking “Comptroller of the Currency” each time it appears and inserting “Director of the National Bank Supervisor”.

(w) AMENDMENTS TO SECTION 5205.—Section 5205 of the Revised Statutes (12 U.S.C. 55) is amended—

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

(2) by striking “Comptroller” and inserting “Director”.

(x) AMENDMENT TO SECTION 5208.—Section 5208 of the Revised Statutes (12 U.S.C. 501) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(y) AMENDMENTS TO SECTION 5210.—Section 5210 of the Revised Statutes (12 U.S.C. 62) is amended in the last sentence—

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

(2) by striking “him” and inserting “the Director”.

(z) AMENDMENTS TO SECTION 5211.—Section 5211 of the Revised Statutes (12 U.S.C. 161) is amended—

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

(5) in the second sentence of subsection (a), by striking “his” each place it appears and inserting “the Director’s”; and 

(6) in subsection (c)—

(A) by striking “his” each place it appears and inserting “the Director’s”; 

(B) in the third sentence, by striking “inform himself” and inserting “be informed”.

(aa) AMENDMENTS TO SECTION 5213.—Section 5213 of the Revised Statutes (12 U.S.C. 164) is amended—

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

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

(bb) AMENDMENT TO SECTION 5216.—Section 5216 of the Revised Statutes (omitted from the United States Code) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(cc) AMENDMENT TO SECTION 5218.—Section 5218 of the Revised Statutes (omitted from the United States Code) is amended by striking “First Comptroller of the Treasury” and inserting “First Director of the National Bank Supervisor”.

(dd) AMENDMENT TO SECTION 5220.—Section 5220 of the Revised Statutes (12 U.S.C. 181) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

(ee) AMENDMENT TO SECTION 5221.—Section 5221 of the Revised Statutes (12 U.S.C. 182) is amended by striking “Comptroller of the Currency” and inserting “Director of the
National Bank Supervisor”.

(ff) AMENDMENTS TO SECTION 5234.—Section 5234 of the Revised Statutes (12 U.S.C. 192) is amended—

(1) by striking “has refused to pay its circulating notes as therein mentioned, and”; 

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

(3) by striking “Comptroller” and “comptroller” each place they appear and inserting “Director”; and 

(4) by striking “he” each place it appears and inserting “the Director”.

(gg) AMENDMENTS TO SECTION 5235.—Section 5235 of the Revised Statutes (12 U.S.C. 193) is amended—

(1) by striking “Comptroller” and inserting “Director”; and 

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

(hh) AMENDMENTS TO SECTION 5236.—Section 5236 of the Revised Statutes (12 U.S.C. 194) is amended—

(1) by striking “, after full provision has been first made for refunding to the United States and deficiency in redeeming the notes of such association,”;

(2) by striking “Comptroller” and inserting “Director”; 

(3) by striking “him” each place it appears and inserting “the Director”; and 

(4) by striking “his” and inserting “the Director’s”.

(ii) AMENDMENT TO SECTION 5238.—Section 5238 of the Revised Statutes (12 U.S.C. 196) is amended by striking the first sentence.

(jj) AMENDMENTS TO SECTION 5239.—Section 5239 of the Revised Statutes (12 U.S.C.
93) is amended—

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

(2) in subsection (b)—

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

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

(C) in paragraph (12), by striking “Comptroller” and inserting “Director of the National Bank Supervisor”.

(kk) AMENDMENT TO SECTION 5239A.—Section 5239A of the Revised Statutes (12 U.S.C. 93a) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(ll) AMENDMENT TO SECTION 5240.—Section 5240 of the Revised Statutes (12 U.S.C. 481, 482, 483, 484, and 485) is amended—

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

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

(3) in the last sentence of the first undesignated paragraph—

(A) by striking “he” and inserting “the Director”;

(B) by striking “his” and inserting “the Director’s”; (C) by striking “Office” each place it appears and inserting “National Bank Supervisor”;

(5) by striking the fifth undesignated paragraph; and
SEC. 399G. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

Section 11(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended—

(1) by striking “Director, Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”;

(2) by striking subparagraph (E) ; and

(3) by designating subparagraphs (F) through (I) as subparagraphs (E) through (H).

SEC. 399H. REPEAL OF OBSOLETE CURRENCY STATUTES.

(a) OBSOLETE CURRENCY PROVISIONS REPEALED.—

(1) CURRENCY PROVISIONS IN REVISED STATUTES REPEALED.—The following sections of the Revised Statutes are repealed:

(A) Section 5203 (12 U.S.C. 87).

(B) Section 5206 (12 U.S.C. 88).

(C) Section 5196 (12 U.S.C. 89).

(D) Section 5158 (12 U.S.C. 102).

(E) Section 5159 (12 U.S.C. 101a).

(F) Section 5172 (12 U.S.C. 104).

(G) Section 5173 (12 U.S.C. 107).


(K) Section 5195 (12 U.S.C. 123).


(M) Section 5226 (12 U.S.C. 131).


(O) Section 5228 (12 U.S.C. 133).


(Q) Section 5230 (12 U.S.C. 137).


(S) Section 5232 (12 U.S.C. 135).


(U) Section 5185 (12 U.S.C. 151).

(V) Section 5186 (12 U.S.C. 152).


(X) Section 5161 (12 U.S.C. 169).


(DD) Section 5167 (12 U.S.C. 175).


(2) CURRENCY PROVISIONS IN OTHER STATUTES REPEALED.—The following provisions of law are repealed:

(A) Section 12 of the Act entitled “An Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes.” and approved March 14, 1900 (12 U.S.C. 101).

(B) Section 3 of the Act entitled “An Act to amend the laws relating to the denominations, and notes by national banks and to permit the issuance of notes of small denominations, and for other purposes.” and approved October 5, 1917 (12 U.S.C. 103).

(C) The following sections of the Act entitled “An Act fixing the amount of United States notes, providing for a redistribution of the national-bank currency, and for other purposes.” and approved June 20, 1874:

(i) Section 5 (12 U.S.C. 105)

(ii) Section 3 (12 U.S.C. 121).

(iii) Section 8 (12 U.S.C. 126).


(D) The following sections of the Act entitled “An Act to enable national-banking associations to extend their corporate existence, and for other purposes.” and approved July 12, 1882:
(i) Section 8 (12 U.S.C. 177).


(3) OTHER STATUTES REPEALED.—

(A) The Act entitled “An Act to amend the National Bank Act in providing for redemption of national bank notes stolen from or lost by banks of issue.” and approved July 28, 1892 (12 U.S.C. 125) is repealed.

(B) The Act entitled “An Act authorizing the conversion of national gold banks.” and approved February 14, 1880 (12 U.S.C. 153) is repealed.

(b) FEDERAL RESERVE ACT AND OTHER LAWS AMENDED.—

(1) FEDERAL RESERVE ACT.—

(A) The eighth paragraph of the fourth undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking “Comptroller of the Currency” and inserting “Secretary of the Treasury”.

(B) Subsection 11(d) of the Federal Reserve Act (12 U.S.C. 248(d)) is amended—

(i) by striking “bureau under the charge of the Comptroller of the Currency” and inserting “Secretary of the Treasury”; and

(ii) by striking “Comptroller” the second place it appears and inserting “Secretary”.

(C) Section 16 of the Federal Reserve Act is amended—

(i) in the first sentence of the eighth undesignated paragraph (12 U.S.C. 418), by striking “the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury,” and inserting “the Secretary of
the Treasury shall’;

(ii) in the ninth undesignated paragraph (12 U.S.C. 419), to read as follows:

“When such notes have been prepared, the notes shall be delivered to the Board of
Governors of the Federal Reserve System subject to the order of the Secretary of the
Treasury for the delivery of such notes in accordance with this Act.”;

(iii) in the tenth undesignated paragraph (12 U.S.C. 420) by

striking “Comptroller of the Currency” and inserting “Secretary of the
Treasury”; and

(iv) in the eleventh undesignated paragraph (12 U.S.C. 421), to
read as follows:

“The Secretary of the Treasury may examine the plates, dies, bed pieces, and
other material used in the printing of Federal Reserve notes and may issue regulations
relating to such examinations.”.

(D) The sixth undesignated paragraph of section 18 of the Federal Reserve
Act (omitted from U.S. Code) is amended—

(i) by striking “Comptroller of the Currency” each place it appears
and inserting “Secretary of the Treasury”; and

(ii) in the seventh sentence, by striking “Comptroller” and inserting
“Secretary of the Treasury”.

(2) OTHER LAWS.—

(A) The Act entitled “An Act to provide for the redemption of national-
bank notes, Federal Reserve notes, and Federal Reserve notes which cannot be
identified as to the bank of issue.” and approved June 13, 1933, is amended—

(i) in the first section (12 U.S.C. 121a)—

(I) by striking “whenever any national-bank notes, Federal Reserve bank notes,” and inserting “whenever any Federal Reserve bank notes”; and

(II) by striking “, and the notes, other than Federal Reserve notes, so redeemed shall be forwarded to the Comptroller of the Currency for cancellation and destruction”; and

(ii) in the second section (12 U.S.C. 122a)—

(I) by striking “National-bank notes and”; and

(II) by striking “national-bank notes and”.

(B) The first section of the Act entitled “An Act making appropriations for sundry civil expenses of Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes.” and approved March 3, 1875 (12 U.S.C. 106), is amended in the first paragraph that appears under the heading “NATIONAL CURRENCY.” by striking “Secretary of the Treasury:

Provided, That” and all that follows through the period and inserting “Secretary of the Treasury.”.

(C) The Act entitled “An Act to simplify the accounts of the Treasurer of the United States, and for other purposes.” and approved October 10, 1940 (12 U.S.C. 177a) is amended by striking all after the enacting clause and inserting the following: “The cost of transporting and redeeming outstanding national bank notes and Federal Reserve bank notes as may be presented to the Treasurer of the
United States for redemption shall be paid from the regular annual appropriation
for the Department of the Treasury.”.

(D) Section 5234 of the Revised Statutes (12 U.S.C. 192) is amended by
striking “has refused to pay its circulating notes as therein mentioned, and”;

(E) Section 5236 of the Revised Statutes (12 U.S.C. 194) is amended by
striking “, after full provision has been first made for refunding to the United
States any deficiency in redeeming the notes of such association.”.

(F) Section 5238 of the Revised Statutes (12 U.S.C. 196) is amended by
striking the first sentence.

CHAPTER 53—CONFORMING AMENDMENTS TO OTHER STATUTES

SEC. 399I. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY
DEFICIT CONTROL ACT OF 1985.

(a) AMENDMENTS TO SECTION 255.—Section 255(g)(1)(A) of the Balanced Budget and
Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

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

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

(b) AMENDMENTS TO SECTION 256.—Section 256(h)(4) of the Balanced Budget and
Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

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

(2) by striking subparagraphs (C) and (G); and

(3) by redesignating subparagraphs (D),(E), (F) and (H) as subparagraphs (C)
through (G), respectively.

SEC. 399J. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.

(a) AMENDMENTS TO SECTION 2539.—Section 2539(c)(2) of the Crime Control Act of 1990, Public Law 101-647, is amended—

(1) in subparagraph (C), by striking “Office of Thrift Supervision” and inserting “National Bank Supervisor”; and

(2) by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) through (G).

(b) AMENDMENT TO SECTION 2554.—Section 2554(b)(2) of the Crime Control Act of 1990, Public Law 101-647, is amended by striking “Director of the Office of Thrift Supervision” and inserting “Director of the National bank Supervisor”.

SEC. 399K. AMENDMENT TO THE ENERGY CONSERVATION AND PRODUCTION ACT.

Section 303(7) of the Energy Conservation and Product Act (42 U.S.C. 6832(7)) is amended—

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

(2) by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”; and

(3) by striking “the Federal Savings and Loan Insurance Corporation,”.

SEC. 399L. AMENDMENTS TO THE FARM CREDIT ACT OF 1971.

(a) AMENDMENT TO SECTION 5.20.—Section 5.20 of the Farm Credit Act of 1971 (12 U.S.C. 2255) is amended by striking “Comptroller of the Currency” and inserting “Director of
the National Bank Supervisor”.

(b) AMENDMENT TO SECTION 5.22.—Section 5.22 of the Farm Credit Act of 1971 (12 U.S.C. 2257) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

SEC. 399M. AMENDMENT TO THE FINANCIAL REPORTS ACT OF 1988.

Section 3602 of the Financial Reports Act of 1988 (22 U.S.C. 5352) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.


Section 3(a)(5) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4003(a)(5)) is amended—

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

(2) by striking “the Office of Thrift Supervision.”.

SEC. 399O. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) AMENDMENT TO SECTION 581.—Section 581 of the Internal Revenue Code (26 U.S.C. 581) is amended by striking “Comptroller of the Currency” and inserting “Federal Banking Commission”.

(b) AMENDMENT TO SECTION 584.—Section 584(a)(2) of the Internal Revenue Code (26 U.S.C. 584(a)(2)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(c) AMENDMENT TO SECTION 3305.—Section 3305(c) of the Internal Revenue Code (26 U.S.C. 3305(c)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(d) AMENDMENT TO SECTION 7507.—Section 7507(a) of the Internal Revenue Code (26 U.S.C. 7507(a)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

SEC. 399P. AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

SEC. 399Q. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.

(a) AMENDMENT TO SECTION 2.—Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “Comptroller of the Currency” and inserting “Director National Bank Supervisor”.

(b) AMENDMENT TO SECTION 6.—Section 6(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(3)) is amended by striking “Federal Savings and Loan Insurance Corporation” and inserting “Director of National Bank Supervisor”.

SEC. 399R. AMENDMENTS TO THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

(a) AMENDMENTS TO SECTION 604.—Section 604 of The Neighborhood Reinvestment Corporation Act, as amended (42 U.S.C. 8103) is amended—

(1) in subsection (a)(5), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; and

(2) in subsection (f), by striking “Comptroller of the Currency, through a duly designated Deputy Comptroller” and inserting “Director of the National Bank Supervisor through a duly designated Deputy Director”.

(b) AMENDMENT TO SECTION 606.—Section 606 of The Neighborhood Reinvestment Corporation Act, as amended (42 U.S.C. 8105(c)(3)) is amended—

(1) by striking the “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”; and

(2) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

SEC. 399S. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; 

(B) in paragraph (34)(A)—

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

(ii) in clause (iii) by adding “and” after the semi-colon; 

(iii) by striking clause (iv); and 

(iv) by redesignating clause (v) as clause (iv); 

(C) in paragraph (B)—

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

(ii) in clause (iii), by adding “and” after the semi-colon; a 

(iii) by striking clause (iv); and
(iv) by redesignating clause (v) as clause (iv);

(D) in paragraph (C)—

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

(ii) in clause (iii), by adding “and” after the semi-colon;

(iii) by striking clause (iv); and

(iv) by redesignating clause (v) as clause (iv);

(E) in paragraph (F)—

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

(ii) by striking clause (ii); and

(iii) redesignating clauses (iii), (iv), and (v), as clauses (ii), (iii) and (iv), respectively.

(b) AMENDMENTS TO SECTION 15C.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended in subsection (g)(1)—

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

(B) by striking “the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,.”.

SEC. 399T. AMENDMENTS TO TITLE 5, UNITED STATES CODE

(a) AMENDMENT TO SECTION 3132.—Section 3132(a)(1)(D) of Title 5, United States Code (5 U.S.C. 3132(a)(1)(D)) is amended—

(1) by striking “Office of the Comptroller of the Currency” and inserting
“National Bank Supervisor”; and

(2) by striking “the Office of Thrift Supervision”

(b) AMENDMENTS TO SECTION 5314.—Section 5314 of Title 5, United States Code (5 U.S.C. 5314) is amended—

(1) by adding at the end the following new item:

“Director of the National Bank Supervisor.”; and

(2) 90 days after the designated transfer date, by striking “Comptroller of the Currency” and “Director of the Office of Thrift Supervision.”

SEC. 399U. AMENDMENTS TO TITLE 18, UNITED STATES CODE

(a) AMENDMENT TO SECTION 212.—Section 212(c)(2) of Title 18, United States Code (18 U.S.C. 212(c)(2)) is amended—

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

(2) by striking (C); and

(2) by relettering (D) through (H) as (C) through (G).

(b) AMENDMENT TO SECTION 655.—Section 655 of Title 18, United States Code (18 U.S.C. 655) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(c) AMENDMENT TO SECTION 657.—Section 657 of Title 18, United States Code (18 U.S.C. 657) is amended by striking “Office of Thrift Supervision, the Resolution Trust Corporation” and inserting “National Bank Supervisor”.

(d) AMENDMENT TO SECTION 981.—Section 981(a)(1)(D) of Title 18, United States Code (18 U.S.C. 981(a)(1)(D)) is amended—
(1) by striking “Resolution Trust Corporation”; and
(2) by striking “Office of the Comptroller of the Currency or the Office of Thrift
Supervision” and inserting “National Bank Supervisor”.

(e) AMENDMENT TO SECTION 982.—Section 982(a)(3) of Title 18, United States Code (18
U.S.C. 982(a)(3)) is amended—
(1) by striking “Resolution Trust Corporation”; and
(2) by striking “Office of the Comptroller of the Currency or the Office of Thrift
Supervision” and inserting “National Bank Supervisor”.

(f) AMENDMENT TO SECTION 1005.—Section 1005 of Title 18, United States Code (18
U.S.C. 1005) is amended by striking “Comptroller of the Currency” and inserting “Director of
the National Bank Supervisor”.

(g) AMENDMENT TO SECTION 1006.—Section 1006 of Title 18, United States Code (18
U.S.C. 1006) is amended—
(1) by striking “Office of Thrift Supervision” and inserting “the National Bank
Supervisor”; and
(2) by striking “the Resolution Trust Corporation”.

(h) AMENDMENT TO SECTION 1014.—Section 1014 of Title 18, United States Code (18
U.S.C. 1014) is amended—
(1) by striking “Office of Thrift Supervision” and inserting “National Bank
Supervisor”; and
(2) by striking “Resolution Trust Corporation.”

(i) AMENDMENT TO SECTION 1032.—Section 1032 of Title 18, United States Code (18
U.S.C. 1032) is amended—
(1) by striking “Comptroller of the Currency or the Director of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”; and

(2) by striking “the Resolution Trust Corporation”;

(j) AMENDMENT TO SECTION 1906—Section 1906 of Title 18, United States Code (18 U.S.C. 1906) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

SEC. 399V. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) AMENDMENT TO SECTION 1348.—Section 1348 of Title 28, United States Code (28 U.S.C. 1348) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(b) AMENDMENTS TO SECTION 1394.—Section 1394 of Title 28, United States Code (28 U.S.C. 1394) is amended;

(1) in the heading of section 1934, by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”; and

(2) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(c) AMENDMENT TO SECTION 2001.—Section 2001(c) of Title 28, United States Code (28 U.S.C. 2001(c)) is amended by striking “Comptroller of the Currency” and inserting “Director of the national bank Supervisor”.

(d) AMENDMENT TO SECTION 2002.—Section 2002 of Title 28, United States Code (28 U.S.C. 2002) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(e) AMENDMENT TO SECTION 2004.—Section 2004 of Title 28, United States Code (28

SEC. 399W. AMENDMENTS TO TITLE 31, UNITED STATES CODE

(a) Amendment to Section 307.—Section 307 of Title 31, United States Code (31 U.S.C. 307) is amended to read as follows:

“SEC. 307. NATIONAL BANK SUPERVISOR.

The National Bank Supervisor, established by section 311 of the Federal Depository Institutions Supervision and Regulation Improvements Act of 2009, is a bureau in the Department of the Treasury.”.

(b) Repeal of Section 309.—Section 309 of Title 31, United States Code (31 U.S.C. 309) is repealed.

(c) Amendments to Section 321.—Section 321 of Title 31, United States Code (31 U.S.C. 321) is amended—

(1) by inserting “and” at the end of subsection (c)(1);

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

(3) by striking subsection (c)(3); and

(4) by striking subsection (e).

(d) Amendments to Section 714.—Section 714 of Title 31, United States Code (31 U.S.C. 714) is amended—

(1) in the heading of section 714, by striking “Office of the Comptroller of the Currency” and inserting “National Bank Supervisor”; and

(2) in subsection (a) by striking “Office of the Comptroller of the Currency, and the Office of Thrift Supervision” and inserting “National Bank Supervisor”.

(e) **AMENDMENT TO SECTION 718.**—Section 718(a) of Title 31, United States Code (31 U.S.C. 718(a)) is amended by striking “Office of the Comptroller of the Currency” and inserting “National Bank Supervisor”.

(f) **AMENDMENT TO SECTION 1321.**—Section 1321(b) of Title 31, United States Code (31 U.S.C. 1321) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

**SEC. 399X. AMENDMENTS TO TITLE 44, UNITED STATES CODE.**

(a) **AMENDMENT TO SECTION 1111.**—Section 1111 of Title 44, United States Code (44 U.S.C. 1111) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

(b) **AMENDMENT TO SECTION 1344.**—Section 1344 of Title 44, United States Code (44 U.S.C. 1344) is amended by striking “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

**SEC. 399Y. AMENDMENT TO THE TRUST INDENTURE ACT OF 1939.**

Section 321(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77uuu(b)) is amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor.”

**CHAPTER 54—EFFECTIVE DATE OF CONFORMING AMENDMENTS**

**SEC. 399Z. EFFECTIVE DATE.**

The amendments made in chapter 51 through 53 shall become effective on the transfer date.
TITLE IV—REGISTRATON OF ADVISERS TO
PRIVATE FUNDS

SEC. 401. SHORT TITLE.

This Act may be cited as the “Private Fund Investment Advisers Registration Act of 2009”.

SEC. 402. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:

“(29) The term ‘private fund’ means an investment fund that—

“(A) would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)), but for section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) or 80a-3(c)(7)); and

“(B) either—

“(i) is organized or otherwise created under the laws of the United States or of a State; or

“(ii) has 10 percent or more of its outstanding securities owned by U.S. persons.

“(30) The term ‘foreign private adviser’ means any investment adviser who—

“(A) has no place of business in the United States;

“(B) during the preceding 12 months has had—

“(i) fewer than 15 clients in the United States; and
“(ii) assets under management attributable to clients in the United States of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

“(C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53), and has not withdrawn its election.”.

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(a) in paragraph (1), by inserting “, except an investment adviser who acts as an investment adviser to any private fund,” after “investment adviser” the first time it appears;

(b) by amending paragraph (3) to read as follows:

“(3) any investment adviser that is a foreign private adviser;”; and

(c) in paragraph (6)—

(1) in subparagraph (A), by striking “or”;

(2) in subparagraph (B), by striking the period at the end and adding “; or”; and

(3) by adding at the end the following new subparagraph:
“(C) a private fund.”

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended—

(a) by redesignating subsections (b) and (c) as subsections (c) and (d); and

(b) by inserting after subsection (a) the following new subsection (b):

“(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

“(1) IN GENERAL.—The Commission is authorized to require any investment adviser registered under this Act to maintain such records of and submit to the Commission such reports regarding private funds advised by the investment adviser as are necessary or appropriate in the public interest and for the assessment of systemic risk by the Board of Governors of the Federal Reserve System and the Financial Services Oversight Council, and to provide or make available to the Board of Governors of the Federal Reserve System and the Financial Services Oversight Council those reports or records or the information contained therein. The records and reports of any private fund would be an investment company, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act shall be deemed to be the records and reports of the investment adviser.

“(2) REQUIRED INFORMATION.—The records and reports required to be filed with the Commission under this subsection shall include but shall not be limited to the following information for each private fund advised by the investment adviser:

“(A) amount of assets under management, use of leverage (including off-balance sheet leverage), counterparty credit risk exposures, trading and
investment positions, and trading practices; and

“(B) such other information as the Commission, in consultation with the
Board of Governors of the Federal Reserve System, determines necessary or
appropriate in the public interest and for the protection of investors or for the
assessment of systemic risk.

“(3) MAINTENANCE OF RECORDS.—An investment adviser registered under this
Act is required to maintain and keep such records of private funds advised by the
investment adviser for such period or periods as the Commission, by rules and
regulations, may prescribe as necessary or appropriate in the public interest and for the
protection of investors or for the assessment of systemic risk.

“(4) EXAMINATION OF RECORDS.—

“(A) PERIODIC AND SPECIAL EXAMINATIONS.—All records of a private
fund maintained by an investment adviser registered under this Act shall be
subject at any time and from time to time to such periodic, special, and other
examinations by the Commission, or any member or representative thereof, as the
Commission may prescribe.

“(B) AVAILABILITY OF RECORDS.—An investment adviser registered under
this Act shall make available to the Commission or its representatives any copies
or extracts from such records as may be prepared without undue effort, expense or
delay as the Commission or its representatives may reasonably request.

“(5) INFORMATION SHARING.— The Commission shall make available to the
Board of Governors of the Federal Reserve System and the Financial Services Oversight
Council copies of all reports, documents, records and information filed with or provided
to the Commission by an investment adviser under section 204(b) as the Board or the
Council may consider necessary for the purpose of assessing the systemic risk of a
private fund or assessing whether a private fund should be designated a Tier 1 financial
holding company. All such reports, documents, records and information obtained by the
Board or the Council from the Commission under this subsection shall be kept
confidential.

“(6) DISCLOSURES BY PRIVATE FUND.—An investment adviser registered under
this Act shall provide such reports, records and other documents to investors, prospective
investors, counterparties, and creditors, of any private fund advised by the investment
adviser as the Commission, by rules and regulations, may prescribe as necessary or
appropriate in the public interest and for the protection of investors or for the assessment
of systemic risk.

“(7) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law,
the Commission shall not be compelled to disclose any supervisory report or information
contained therein required to be filed with the Commission under subsection (b).
Nothing in this subsection shall authorize the Commission to withhold information from
Congress or prevent the Commission from complying with a request for information from
any other Federal department or agency or any self-regulatory organization requesting the
report or information for purposes within the scope of its jurisdiction, or complying with
an order of a court of the United States in an action brought by the United States or the
Commission. For purposes of section 552 of title 5, United States Code, this subsection
shall be considered a statute described in subsection (b)(3)(B) of such section 552.”.

SEC. 405. DISCLOSURE PROVISION ELIMINATED.
Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by striking subsection (c).

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended—

(1) in subsection (a)—

(A) by striking the second sentence; and

(B) by striking the period at the end of the first sentence and inserting the following:

“, including rules and regulations defining technical, trade, and other terms used in this title. For the purposes of its rules and regulations, the Commission may—

“(1) classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters; and

“(2) ascribe different meanings to terms (including the term ‘client’) used in different sections of this title as the Commission determines necessary to effect the purposes of this title.”; and

(2) by adding at the end the following new subsection:

“(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 6 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) and the Commodity Exchange Act (7 U.S.C. 1a et seq.).”.
TITLE V—OFFICE OF NATIONAL INSURANCE

SEC. 501. SHORT TITLE.

This title may be cited as the “Office of National Insurance Act of 2009”.

SEC. 502. OFFICE OF NATIONAL INSURANCE ESTABLISHED.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

“SEC. 313. OFFICE OF NATIONAL INSURANCE.

“(a) ESTABLISHMENT.—There is established the Office of National Insurance as an office in the Department of the Treasury.

“(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

“(c) FUNCTIONS.—

“(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

“(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

“(B) to recommend to the Board of Governors of the Federal Reserve
System that it designate an insurer, including its affiliates, as an entity subject to regulation as a Tier 1 financial holding company under Section 6 of the Bank Holding Company Act of 1956 (12 U.S.C. 1845);

“(C) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

“(D) to coordinate Federal efforts and establish Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors and assisting the Secretary in negotiating International Insurance Agreements on Prudential Measures;

“(E) to determine, in accordance with subsection (f), whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures;

“(F) to consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance; and

“(G) To perform such other related duties and authorities as may be assigned to it by the Secretary.

“(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).
“(c) GATHERING OF INFORMATION.—

“(1) GENERAL.—In carrying out its functions under subsection (c), the Office may receive and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

“(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c).

“(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule.

“(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator or other regulatory agency. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise
affect, any privilege arising under Federal or State law (including the rules of any
Federal or State Court) to which the data or information is otherwise subject;

“(B) any requirement under Federal or State law to the extent otherwise
applicable, or any requirement pursuant to a written agreement in effect between
the original source of any non-publicly available data or information and the
source of such data or information to the Office, regarding the privacy or
confidentiality of any data or information in the possession of the source to the
Office, shall continue to apply to such data or information after the data or
information has been provided pursuant to this subsection to the Office; and

“(C) any data or information submitted by an insurer, or affiliate of an
insurer, contained in or related to examination, operating, or condition reports
prepared by, or on behalf of, or for the use of a State insurance regulator or other
Federal or State regulatory agency responsible for the insurer or affiliate’s
regulation or supervision shall be considered to be subject to 5 U.S.C. 552(b)(8).

“(6) SUBPOENAS AND ENFORCEMENT.—The Office shall have power to require by
subpoena the production of the data or information requested under paragraph (2).
Subpoenas shall bear the signature of the Director and shall be served by any person or
class of persons designated by the Director for that purpose. In the case of contumacy or
failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate
district court of the United States. Any failure to obey the order of the court may be
punished by the court as a contempt of court.

“(f) PREEMPTION OF STATE INSURANCE MEASURES.—

“(1) STANDARD.—A State insurance measure shall be preempted if, and only to
the extent that the Director determines, in accordance with this subsection, that the
measure—

“(A) directly or indirectly treats a non-United States insurer domiciled in a
foreign jurisdiction that is subject to an International Insurance Agreement on
Prudential Measures less favorably than it treats a United States insurer
domiciled, licensed, admitted, or otherwise authorized in that State; and

“(B) is inconsistent with an International Insurance Agreement on
Prudential Measures.

“(2) DETERMINATION.—

“(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any
determination of inconsistency, the Director shall—

“(i) cause to be published in the Federal Register notice of the
issue regarding the potential inconsistency or preemption, including a
description of each State insurance measure at issue and any applicable
International Insurance Agreement on Prudential Measures;

“(ii) provide interested parties a reasonable opportunity to submit
written comments to the Office; and

“(iii) consider any comments received.

“(B) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any
determination of inconsistency, the Director shall

“(i) notify the appropriate State of the determination; and

“(ii) establish a reasonable period of time before the determination
shall become effective.
“(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(B)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

“(i) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(ii) notify the appropriate State.

“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

“(g) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

“(h) CONSULTATION.—The Director shall consult with State insurance regulators, to the extent the Director determines appropriate, in carrying out the functions of the Office.

“(i) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) preempt any State insurance measure that governs any insurer’s rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

“(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2009; or

“(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

“(j) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Financial Services of the House of Representatives and the Committee on
Banking, Housing, and Urban Affairs of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), and any other information as deemed relevant by the Director or as requested by such Committees.

“(k) USE OF EXISTING RESOURCES—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary.

“(l) DEFINITIONS—For purposes of this section and section 314, the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

“(2) DETERMINATION OF INCONSISTENCY.—The term ‘determination of inconsistency’ means a determination that a State insurance measure is preempted under subsection (f).

“(3) INSURER.—The term ‘insurer’ means any person engaged in the business of insurance, including reinsurance.

“(4) INTERNATIONAL INSURANCE AGREEMENT ON PRUDENTIAL MEASURES.—The term ‘International Insurance Agreement on Prudential Measures’ means a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity regarding prudential measures applicable to the business of insurance or reinsurance.

“(5) NON-UNITED STATES INSURER.—The term ‘non-United States insurer’ means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.
“(6) OFFICE.—The term ‘Office’ means the Office of National Insurance established by this section.

“(7) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(8) STATE.—The term ‘State’ means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

“(9) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

“(10) STATE INSURANCE REGULATOR.—The term “State insurance regulator” means any State regulatory authority responsible for the supervision of insurers.

“(11) UNITED STATES INSURER.—The term ‘United States insurer’ means—

“(A) an insurer that is organized under the laws of a State; or

“(B) a United States branch of a non-United States insurer.

“(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

“SEC. 314 INTERNATIONAL INSURANCE AGREEMENTS ON PRUDENTIAL MEASURES.

“(a) PURPOSE.—It is the sense of the Congress that the insurance marketplace increasingly operates globally with many significant foreign participants. There is increasing tension in the current regulatory systems as the result of an absence of clear and settled means for governments to enter into agreements on prudential measures with respect to the business of
insurance or reinsurance. This impairs the ability of domestic and foreign-based companies to participate fully in each others’ markets.

“(b) AUTHORITY.—The Secretary is authorized to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States.”.

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking “and” at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.”.

(c) CLERICAL AMENDMENT—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.


“Sec. 315. Continuing in office.”.
TITLE VI—FURTHER IMPROVEMENTS TO THE
REGULATION OF BANK HOLDING COMPANIES AND
DEPOSITORY INSTITUTIONS

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

SEC. 602. TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, THRIFTS, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT.
(a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), is amended—

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

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

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

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

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

(3) in subsection (i) by striking paragraphs (1) through (7) and inserting “[reserved]”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

“(III) externally audited financial statements.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) in subparagraph (B), by striking “and”;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by adding after subparagraph (B) the following new subparagraph:

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

and”;

and

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

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

SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“shall include—

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

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

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

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

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

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

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

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

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

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

SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

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

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

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

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

SEC. 612. DE NOVO BRANCHING INTO STATES.

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

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

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

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

SEC. 613. LENDING LIMITS TO INSIDERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

the Deposit Insurance Fund.

“(2) NATIONAL BANKS WITH ASSETS LESS THAN $10 BILLION.—The fees to be

assessed by the National Bank Supervisor on national banks with total consolidated assets

less than $10,000,000,000 shall not exceed the average fees assessed by the States for

examinations on State banks taking into account their size, complexity and financial

condition. In assessing fees, the National Bank Supervisor may provide for differential

fees depending on the asset size of banks, except that the rates shall not exceed the

average rate assessed by the States for examinations of State banks of comparable size.

“(3) HOLDING COMPANIES.—The Board of Governors of the Federal Reserve

System or the Federal Reserve Banks shall assess fees on bank holding companies,

including Tier 1 financial holding companies, sufficient to defray the cost of their

examination.”.

SEC. 616. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING

COMPANIES.

Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended

by adding after “evasions thereof” the following:

“, including regulations relating to the capital levels of bank holding companies.”.
TITLE VII—IMPROVEMENTS TO REGULATION OF

OVER-THE-COUNTER DERIVATIVES MARKETS

SEC. 701. SHORT TITLE.

This title may be cited as the “Over-the-Counter Derivatives Markets Act of 2009”.

Subtitle A—Regulation of Swap Markets

SEC. 711. DEFINITIONS.

(a) Amendments to Definitions in the Commodity Exchange Act.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35), respectively;

(2) by adding after paragraph (8) the following:

“(9) DERIVATIVE.—The term ‘derivative’ means—

“(A) a contract of sale of a commodity for future delivery; or

“(B) a swap.”;

(3) by redesignating paragraph (35) (as redesignated by subsection (a)) as paragraph (36);

(4) by adding after paragraph (34) (as redesignated by subsection (a)) the following:

“(35) SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction that—

“(i) is a put, call, cap, floor, collar, or similar option of any kind for
the purchase or sale of, or based on the value of, one or more interest or
other rates, currencies, commodities, securities, instruments of
indebtedness, indices, quantitative measures, or other financial or
economic interests or property of any kind;

“(ii) provides for any purchase, sale, payment, or delivery (other
than a dividend on an equity security) that is dependent on the occurrence,
non-occurrence, or the extent of the occurrence of an event or contingency
associated with a potential financial, economic, or commercial
consequence;

“(iii) provides on an executory basis for the exchange, on a fixed
or contingent basis, of one or more payments based on the value or level
of one or more interest or other rates, currencies, commodities, securities,
instruments of indebtedness, indices, quantitative measures, or other
financial or economic interests or property of any kind, or any interest
therein or based on the value thereof, and that transfers, as between the
parties to the transaction, in whole or in part, the financial risk associated
with a future change in any such value or level without also conveying a
current or future direct or indirect ownership interest in an asset (including
any enterprise or investment pool) or liability that incorporates the
financial risk so transferred, including any agreement, contract, or
transaction commonly known as an interest rate swap, a rate floor, rate
cap, rate collar, cross-currency rate swap, basis swap, currency swap, total
return swap, equity index swap, equity swap, debt index swap, debt swap,
credit spread, credit default swap, credit swap, weather swap, energy

swap, metal swap, agricultural swap, emissions swap, or commodity swap;

“(iv) is an agreement, contract, or transaction that is, or in the
future becomes, commonly known to the trade as a swap; or

“(v) is any combination or permutation of, or option on, any
agreement, contract, or transaction described in any of clauses (i) through
(iv);

“(B) EXCLUSIONS.—The term ‘swap’ does not include:

“(i) any contract of sale of a commodity for future delivery or
security futures product traded on or subject to the rules of any board of
trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity for deferred shipment or
delivery, so long as such transaction is physically settled;

“(iii) any put, call, straddle, option, or privilege on any security,
certificate of deposit, or group or index of securities, including any interest
therein or based on the value thereof, that is subject to the Securities Act
(15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to foreign
currency entered into on a national securities exchange registered pursuant
to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a);

“(v) any agreement, contract, or transaction providing for the
purchase or sale of one or more securities on a fixed basis that is subject to
the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities
Exchange Act of 1934 (15 U.S.C. 78a et seq);

“(vi) any agreement, contract, or transaction providing for the
purchase or sale of one or more securities on a contingent basis that is
subject to the Securities Act of 1933 (15 U.S.C. 77a et seq) and the
agreement, contract, or transaction predicates such purchase or sale on the
occurrence of a bona fide contingency that might reasonably be expected
to affect or be affected by the creditworthiness of a party other than a party
to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security
as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C.
77b(a)(1)); or

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as
defined in section 2(a)(11) of the Securities Act of 1933) (15
U.S.C. 77b(a)(11)) by the issuer of such security for the purposes
of raising capital, unless such agreement, contract, or transaction is
entered into to manage a risk associated with capital raising;

“(ix) any foreign exchange swap;

“(x) any foreign exchange forward;

“(xi) any agreement, contract, or transaction a counterparty of
which is a Federal Reserve bank, the United States government or an
agency of the United States government that is expressly backed by the
full faith and credit of the United States; and

“(xii) any security-based swap, other than a security-based swap as
described in subparagraph 38(C).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The
term ‘swap’ shall be construed to include a master agreement that provides for an
agreement, contract, or transaction that is a swap pursuant to subparagraph (A),
together with all supplements to any such master agreement, without regard to
whether the master agreement contains an agreement, contract, or transaction that
is not a swap pursuant to subparagraph (A), except that the master agreement shall
be considered to be a swap only with respect to each agreement, contract, or
transaction under the master agreement that is a swap pursuant to subparagraph
(A).”.

(5) in paragraph (13) (as redesignated by subsection (a))—

(A) in subparagraph (A)—

(i) in clause (vii), by striking “$25,000,000” and inserting

“$50,000,000”;

(ii) in clause (xi), by striking “total assets in an amount” and

inserting “amounts invested on a discretionary basis”; and

(B) in paragraph (C), by striking “determines” and inserting “and the

Securities and Exchange Commission may further jointly determine”.

(6) in paragraph (30) (as redesignated by subsection (a)), by—
(A) redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking “and”; and

(C) inserting after subparagraph (D) the following:

“(E) an alternative swap execution facility registered under section 5h;

“(F) a swap repository; and”; and

(7) by adding after paragraph (36) (as redesignated by subsection (c)) the following:

“(37) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”.

(8) by adding after paragraph (37) the following:

“(38) SECURITY-BASED SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

“(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

“(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

“(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial
statements, financial condition, or financial obligations of the
issuer.

“(B) EXCLUSION.—The term ‘security-based swap’ does not include any
agreement, contract, or transaction that meets the definition of security-based
swap only because it references or is based upon a government security.

“(C) MIXED SWAP.—The term ‘security-based swap’ includes any
agreement, contract, or transaction that is as described in subparagraph (A) and
also is based on the value of one or more interest or other rates, currencies,
commodities, instruments of indebtedness, indices, quantitative measures, other
financial or economic interest or property of any kind (other than a single security
or a narrow-based security index), or the occurrence, non-occurrence, or the
extent of the occurrence of an event or contingency associated with a potential
financial, economic, or commercial consequence (other than an event described in
subparagraph (A)(iii)).

“(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The
term ‘security-based swap’ shall be construed to include a master agreement that
provides for an agreement, contract, or transaction that is a security-based swap
pursuant to subparagraph (A), together with all supplements to any such master
agreement, without regard to whether the master agreement contains an
agreement, contract, or transaction that is not a security-based swap pursuant to
subparagraph (A), except that the master agreement shall be considered to be a
security-based swap only with respect to each agreement, contract, or transaction
under the master agreement that is a security-based swap pursuant to
subparagraph (A).”.

(9) by adding after paragraph (38) the following:

“(39) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person engaged in
the business of buying and selling swaps for such person's own account, through a
broker or otherwise.

“(B) EXCEPTION.—The term ‘swap dealer’ does not include a person that
buys or sells swaps for such person's own account, either individually or in a
fiduciary capacity, but not as a part of a regular business.”.

(10) by adding after paragraph (39) the following:

“(40) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ means any
person who is not a swap dealer and who maintains a substantial net position in
outstanding swaps, other than to create and maintain an effective hedge under generally
accepted accounting principles, as the Commission and the Securities and Exchange
Commission may further jointly define by rule or regulation.”;

(11) by adding after paragraph (40) the following:

“(41) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based
swap participant’ means any person who is not a security-based swap dealer and
who maintains a substantial net position in outstanding security-based swaps, other than
to create and maintain an effective hedge under generally accepted accounting principles,
as the Commission and the Securities and Exchange Commission may further jointly
define by rule or regulation.”.

(12) by adding after paragraph (41) the following:
“(42) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).”.

(13) by adding after paragraph (42) the following:

“(43) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a state chartered bank that is a member of the Federal Reserve System; or

“(ii) a state chartered branch or agency of a foreign bank;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a national bank; or

“(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.”.

(14) by adding after paragraph (43) the following:

“(44) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person engaged in the business of buying and selling security-based swaps for
such person's own account, through a broker or otherwise.

“(B) EXCEPTION.—The term ‘security-based swap dealer’ does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.”.

(15) by adding after paragraph (44) the following:

“(45) GOVERNMENT SECURITY.—The term ‘government security’ has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).”.

(16) by adding after paragraph (45) the following:

“(46) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.”.

(17) by adding after paragraph (46) the following:

“(47) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.”.

(18) by adding after paragraph (47) the following:

“(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-
based swap dealer or major security-based swap participant’ means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10).

(19) by adding after paragraph (48) the following:

“(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term ‘person associated with a swap dealer or major swap participant’ or ‘associated person of a swap dealer or major swap participant’ means any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant, or any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6) of this Act.

(20) by adding after paragraph (49) the following:

“(50) SWAP REPOSITORY.—The term ‘swap repository’ means an entity that
collects and maintains the records of the terms and conditions of swaps or security-based
swaps entered into by third parties.”.

(b) JOINT RULE-MAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the
Securities and Exchange Commission shall jointly adopt a rule further defining the terms
“swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major
swap participant,” “major security-based swap participant,” and “eligible contract
participant” no later than 180 days after the effective date of this Act.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission
and the Securities and Exchange Commission may prescribe rules defining the term
“swap” or “security-based swap” to include transactions that have been structured to
evade this Act.

(c) JOINT RULEMAKING UNDER THIS ACT.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this Act by
the Commodity Futures Trading Commission and the Securities and Exchange
Commission shall be uniform.

(2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading
Commission and the Securities and Exchange Commission fail to jointly prescribe
uniform rules and regulations under any provision of this Act in a timely manner, the
Secretary of the Treasury, in consultation with the Commodity Futures Trading
Commission and the Securities and Exchange Commission, shall prescribe rules and
regulations under such provision. A rule prescribed by the Secretary of the Treasury shall
be enforced as if prescribed jointly by the Commodity Futures Trading Commission and
the Securities and Exchange Commission and shall remain in effect until the Secretary
rescinds the rule or until the effective date of a corresponding rule prescribed jointly by
the Commodity Futures Trading Commission and the Securities and Exchange
Commission in accordance with this section, whichever is later.

(3) DEADLINE.—The Secretary of the Treasury shall adopt rules and regulations
under paragraph (2) within 180 days of the time that the Commodity Futures Trading
Commission and the Securities and Exchange Commission failed to adopt uniform rules
and regulations.

(4) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations
under this Act, the Commodity Futures Trading Commission and the Securities and
Exchange Commission shall prescribe requirements to treat functionally or economically
similar products similarly.

(5) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this Act shall be
construed to require the Commodity Futures Trading Commission and the Securities and
Exchange Commission to adopt joint rules that treat functionally or economically
different products identically.

(6) JOINT INTERPRETATION.—Any interpretation of, or guidance regarding, a
provision of this Act, shall be effective only if issued jointly by the Commodity Futures
Trading Commission and the Securities and Exchange Commission if this Act requires
the Commodity Futures Trading Commission and the Securities and Exchange
Commission to issue joint regulations to implement the provision.

(d) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is
amended by adding at the end the following: “The Commission shall not have the authority to
grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Market Act of 2009, except as expressly authorized under the provisions of that Act.”.

SEC. 712. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

(1) by striking ““(C)” and ““(D)” and inserting ““(C), (D), and (G)”;

(2) by striking “subsections (c) through (i)” and inserting “subsections (c) and (f)”;

and

(3) by striking “involving contracts of sale” and inserting “involving swaps or contracts of sale”.

(b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by inserting after subparagraph (F) the following—

“(G) Nothing contained in this subsection (a)(1) shall supersede or limit the jurisdiction conferred on the Securities and Exchange Commission or other regulatory authority by, or otherwise restrict the authority of the Securities and Exchange Commission or other regulatory authority under, the Over-the-Counter Derivatives Markets Act of 2009, including with respect to a security-based swap as described in subparagraph 38(C) of section 1a of the Commodity Exchange Act.”.

(c) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i) by striking “or”;

(2) by redesignating clause (ii) as clause (iii); and
(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

SEC. 713. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g), and 2(h)) are repealed.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by

inserting after subsection (c) the following:

“(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and (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, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

“(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.”.

(3) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by

inserting after subsection (i) the following:

“(j) CLEARING REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (8), it shall be unlawful to enter into a swap that is standardized unless—

“(A) the swap is cleared by a derivatives clearing organization registered under this Act; and
“(B) the rules of the derivatives clearing organization described in
subparagraph (A) prescribe that all swaps with the same terms and conditions are
fungible and may be offset with each other.

“(2) STANDARDIZATION IF CLEARED.—A swap that is accepted for clearing by any
registered derivatives clearing organization shall be presumed to be standardized.

“(3) SWAPS DESIGNATED AS STANDARDIZED.—

“(A) Within 180 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Commission and the Securities and
Exchange Commission shall jointly adopt rules to further define the term
‘standardized.’ In adopting such rules, the Commission and the Securities and
Exchange Commission shall jointly define the term ‘standardized’ as broadly as
possible, after taking into account the following factors:

“(i) the extent to which any of the terms of the swap, including
price, are disseminated to third parties or are referenced in other
agreements, contracts, or transactions;

“(ii) the volume of transactions in the swap;

“(iii) the extent to which the terms of the swap are similar to the
terms of other agreements, contracts, or transactions that are centrally
cleared;

“(iv) whether any differences in the terms of the swap, compared
to other agreements, contracts, or transactions that are centrally cleared,
are of economic significance; and

“(v) any other factors the Commission and the Securities and
Exchange Commission determine to be appropriate.

“(B) The Commission may separately designate a particular swap or class of swaps as standardized, taking into account the factors enumerated in subparagraph (A)(i)-(v) and the joint rules adopted under paragraph (3)(A).

“(4) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this Act provided that any such rules or interpretations must be issued jointly to be effective.

“(5) REQUIRED REPORTING.— Both counterparties to a swap that is not accepted for clearing by any derivatives clearing organization shall report such a swap either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

“(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; and

“(B) swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—

“(i) 90 days after the effective date of the Over-the-Counter
Derivatives Markets Act of 2009; or

“(ii) such other time after entering into the swap as the

Commission may prescribe by rule or regulation.”.

“(7) MANDATORY TRADING.—Except as provided in paragraph (8), a swap that is

standardized shall be traded on a board of trade designated as a contract market under

section 5 or on an alternative swap execution facility registered under section 5h.

“(8) EXCEPTIONS.—The requirements of subsection (j)(1) and (7) do not apply to

a swap if—

“(A) no derivatives clearing organization registered under this Act will

accept the swap for clearing; or

“(B) one of the counterparties to the swap—

“(i) is not a swap dealer or major swap participant; and

“(ii) does not meet the eligibility requirements of any derivatives

clearing organization that clears the swap.”.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7

U.S.C. 7a-1) are amended to read as follows:

“(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing

organization, unless registered with the Commission, directly or indirectly to make use of the

mails or any means or instrumentality of interstate commerce to perform the functions of a

derivatives clearing organization described in section 1a(10) of this Act with respect to—

“(1) a contract of sale of a commodity for future delivery (or option on such a

contract) or option on a commodity, in each case unless the contract or option is—
“(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

“(B) a security futures product cleared by a clearing agency registered

with the Securities and Exchange Commission under the Securities Exchange Act

of 1934 (15 U.S.C. 78a, et seq.); or

“(2) a swap.

“(b) VOLUNTARY REGISTRATION.—

“(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements,

contracts, or transactions that are not required to be cleared under this Act may register

with the Commission as a derivatives clearing organization.

“(2) CLEARING AGENCIES.—A derivatives clearing organization may clear

security-based swaps that are required to be cleared by a person who is registered as a


(2) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by

adding at the end the following:

“(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is

required to be registered as a derivatives clearing organization under this section shall register

with the Commission regardless of whether the person is also a bank or a clearing agency

registered with the Securities and Exchange Commission under the Securities Exchange Act of


“(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the

Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and

Exchange Commission shall jointly adopt uniform rules governing persons that are registered as

derivatives clearing organizations for swaps under this subsection and persons that are registered
as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15
U.S.C. 78a, et seq.).

“(i) CONSULTATION.—The Commission and the Securities and Exchange Commission
shall consult with the appropriate Federal banking agencies prior to adopting rules under this
section with respect to swaps.

“(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a
derivatives clearing organization from registration under this section for the clearing of swaps if
the Commission finds that such derivatives clearing organization is subject to comparable,
comprehensive supervision and regulation on a consolidated basis by the Securities and
Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the
organization’s home country.

“(k) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each derivatives clearing organization shall designate an
individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board or to the senior officer of the derivatives
clearing organization; and

“(B) shall—

“(i) review compliance with the core principles in section 5b(c)(2).

“(ii) in consultation with the board of the derivatives clearing
organization, a body performing a function similar to that of a board, or
the senior officer of the derivatives clearing organization, resolve any
conflicts of interest that may arise;
“(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and
“(iv) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.
“(C) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.
“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”.

(3) Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:
“(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—
“(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply
with the core principles specified in this paragraph and any requirement that the
Commission may impose by rule or regulation pursuant to section 8a(5). Except
where the Commission determines otherwise by rule or regulation, a derivatives
clearing organization shall have reasonable discretion in establishing the manner
in which it complies with the core principles.

“(B) FINANCIAL RESOURCES.—

“(i) The derivatives clearing organization shall have adequate
financial, operational, and managerial resources to discharge its
responsibilities.

“(ii) Financial resources shall at a minimum exceed the total
amount that would—

“(I) enable the derivatives clearing organization to meet its
financial obligations to its members and participants
notwithstanding a default by the member or participant creating the
largest financial exposure for that derivatives clearing organization
in extreme but plausible market conditions; and

“(II) enable the derivatives clearing organization to cover
its operating costs for a period of one year, calculated on a rolling
basis.

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

“(i) The derivatives clearing organization shall establish—

“(I) appropriate admission and continuing eligibility
standards (including sufficient financial resources and operational
capacity to meet obligations arising from participation in the
derivatives clearing organization) for members of and participants
in the organization; and

“(II) appropriate standards for determining eligibility of
agreements, contracts, or transactions submitted to the derivatives
clearing organization for clearing.

“(ii) The derivatives clearing organization shall have procedures in
place to verify that participation and membership requirements are met on
an ongoing basis.

“(iii) The derivatives clearing organization’s participation and
membership requirements shall be objective, publicly disclosed, and
permit fair and open access.

“(D) RISK MANAGEMENT.—

“(i) The derivatives clearing organization shall have the ability to
manage the risks associated with discharging the responsibilities of a
derivatives clearing organization through the use of appropriate tools and
procedures.

“(ii) The derivatives clearing organization shall measure its credit
exposures to its members and participants at least once each business day
and shall monitor such exposures throughout the business day.

“(iii) Through margin requirements and other risk control
mechanisms, a derivatives clearing organization shall limit its exposures to
potential losses from defaults by its members and participants so that the
operations of the derivatives clearing organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.

“(iv) Margin required from all members and participants shall be sufficient to cover potential exposures in normal market conditions.

“(v) The models and parameters used in setting margin requirements shall be risk-based and reviewed regularly.

“(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization shall—

“(i) complete money settlements on a timely basis, and not less than once each business day;

“(ii) employ money settlement arrangements that eliminate or strictly limit the derivatives clearing organization’s exposure to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

“(iii) ensure money settlements are final when effected;

“(iv) maintain an accurate record of the flow of funds associated with each money settlement;

“(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations; and

“(vi) for physical settlements, establish rules that clearly state the derivatives clearing organization’s obligations with respect to physical
deliveries. The risks from these obligations shall be identified and
managed.

“(F) TREATMENT OF FUNDS.—

“(i) The derivatives clearing organization shall have standards and
procedures designed to protect and ensure the safety of member and
participant funds and assets.

“(ii) The derivatives clearing organization shall hold member and
participant funds and assets in a manner whereby risk of loss or of delay in
the derivatives clearing organization’s access to the assets and funds is
minimized.

“(iii) Assets and funds invested by the derivatives clearing
organization shall be held in instruments with minimal credit, market, and
liquidity risks.

“(G) DEFAULT RULES AND PROCEDURES.—

“(i) The derivatives clearing organization shall have rules and
procedures designed to allow for the efficient, fair, and safe management
of events when members or participants become insolvent or otherwise
default on their obligations to the derivatives clearing organization.

“(ii) The derivatives clearing organization’s default procedures
shall be clearly stated, and they shall ensure that the derivatives clearing
organization can take timely action to contain losses and liquidity
pressures and to continue meeting its obligations.

“(iii) The default procedures shall be publicly available.
“(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

“(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the derivatives clearing organization and for resolution of disputes; and

“(ii) have the authority and ability to discipline, limit, suspend, or terminate a member’s or participant’s activities for violations of rules of the derivatives clearing organization.

“(I) SYSTEM SAFEGUARDS.—The derivatives clearing organization shall—

“(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the derivatives clearing organization’s responsibilities and obligations; and

“(iii) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(J) REPORTING.—The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct
oversight of the derivatives clearing organization.

“(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

“(L) PUBLIC INFORMATION.—

“(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the derivatives clearing organization’s services.

“(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing its clearing and settlement systems (including default procedures) available to market participants.

“(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—

“(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the derivatives clearing organization;

“(II) clearing and other fees that the derivatives clearing organization charges its members and participants;

“(III) the margin-setting methodology and the size and composition of the financial resource package of the derivatives
clearing organization;

“(IV) other information relevant to participation in the settlement and clearing activities of the derivatives clearing organization; and

“(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by it.

“(M) INFORMATION-SHARING.—The derivatives clearing organization shall—

“(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

“(ii) use relevant information obtained from the agreements in carrying out the clearing organization’s risk management program.

“(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this chapter, the derivatives clearing organization shall avoid—

“(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

“(ii) imposing any material anticompetitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

“(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of owners and participants.

“(ii) The derivatives clearing organization shall establish and
enforce appropriate fitness standards for directors, members of any
disciplinary committee, and members of the derivatives clearing
organization, and any other persons with direct access to the settlement or
clearing activities of the derivatives clearing organization, including any
parties affiliated with any of the persons described in this subparagraph.

“(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall
establish and enforce rules to minimize conflicts of interest in the decision-
making process of the derivatives clearing organization and establish a process for
resolving such conflicts of interest.

“(Q) COMPOSITION OF THE BOARDS.—The derivatives clearing
organization shall ensure that the composition of the governing board or
committee includes market participants.

“(R) LEGAL RISK.—The derivatives clearing organization shall have a well
founded, transparent, and enforceable legal framework for each aspect of its
activities.”.

(4) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is further
amended by adding after subsection (j), as added by this section, the following:

“(k) REPORTING.—

“(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall
provide to the Commission all information determined by the Commission to be
necessary to perform its responsibilities under this Act. The Commission shall adopt data
collection and maintenance requirements for swaps cleared by derivatives clearing
organizations that are comparable to the corresponding requirements for swaps accepted
by swap repositories and swaps traded on alternative swap execution facilities. Subject to
section 8, the Commission shall share such information, upon request, with the Board, the
Securities and Exchange Commission, the appropriate Federal banking agencies, the
Financial Services Oversight Council, and the Department of Justice or to other persons
the Commission deems appropriate, including foreign financial supervisors (including
foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps
shall provide to the Commission, or its designee, such information as is required by, and
in a form and at a frequency to be determined by, the Commission, in order to comply
with the public reporting requirements contained in section 8(j).”.

(6) Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in
the last sentence by adding “central bank and ministries” after “department” each place it
appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal
Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2))
are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products
Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

**SEC 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

“(a) EXCLUSION.—Except as provided in subsection (b), no provisions of the Commodity
Exchange Act (7 U.S.C. 1, et seq.) shall apply to, and the Commodity Futures Trading
Commission and the Securities and Exchange Commission shall not exercise regulatory
authority under the Commodity Exchange Act with respect to, an identified banking product.

“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

“(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)); and

“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1, et seq.), the Securities Act of 1933 (15 U.S.C. 77a, et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.).”.

SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding after subsection (i) the following:

“(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

“(1) IN GENERAL.— The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3);

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting
described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) derivatives clearing organizations pursuant to section 5b(k)(2);

“(B) swap repositories pursuant to section 21(c)(3); and

“(C) reports received by the Commission pursuant to section 4r.”.

SEC. 715. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by inserting after section 20 the following:

“SEC. 21. SWAP REPOSITORIES.

“(a) REGISTRATION REQUIREMENT.—

“(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

“(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

“(b) STANDARD SETTING.—

“(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

“(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

“(3) COMPARABILITY.—The standards prescribed by the Commission under this
subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

“(c) DUTIES.—A swap repository shall—

“(1) accept data prescribed by the Commission for each swap under subsection (b);

“(2) maintain such data in such form and manner and for such period as may be required by the Commission;

“(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

“(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(d) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a swap repository under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

“(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and
Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.”.

SEC. 716. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by inserting after section 4q the following:

“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

“(a) IN GENERAL.—Any person who enters into a swap and—

“(1) did not clear the swap in accordance with section 2(j)(1); and

“(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

“shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and
“(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.”.

SEC. 717. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by inserting after section 4r (as added by section 716) the following:

“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

“(a) REGISTRATION.—

“(1) It shall be unlawful for any person to act as a swap dealer unless such person is registered as a swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major swap participant unless such person shall have registered as a major swap participant with the Commission.

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.
“(2) CONTENTS.—The application shall be made in such form and manner as
prescribed by the Commission, giving any information and facts as the Commission may
deem necessary concerning the business in which the applicant is or will be engaged.
Such person, when registered as a swap dealer or major swap participant, shall continue
to report and furnish to the Commission such information pertaining to such person's
business as the Commission may require.

“(3) EXPIRATION.—Each registration shall expire at such time as the Commission
may by rule or regulation prescribe.

“(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission
may prescribe rules applicable to swap dealers and major swap participants, including
rules that limit the activities of swap dealers and major swap participants.

“(5) TRANSITION.—Rules adopted under this section shall provide for the
registration of swap dealers and major swap participants no later than one year after the

“(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically
provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major
swap participant to permit any person associated with a swap dealer or a major swap
participant who is subject to a statutory disqualification to effect or be involved in
effecting swaps on behalf of such swap dealer or major swap participant, if such swap
dealer or major swap participant knew, or in the exercise of reasonable care should have
known, of such statutory disqualification.

“(c) DUAL REGISTRATION.—

“(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer
under this section shall register with the Commission regardless of whether that person
also is a bank or is registered with the Securities and Exchange Commission as a
security-based swap dealer.

“(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a
major swap participant under this section shall register with the Commission regardless
of whether that person also is a bank or is registered with the Securities and Exchange
Commission as a major security-based swap participant.

“(d) JOINT RULES.—

“(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-
the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and
Exchange Commission shall jointly adopt uniform rules for persons that are registered as
swap dealers or major swap participants under this section and persons that are registered
as security-based swap dealers or major security-based swap participants under the

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the
Securities and Exchange Commission shall not prescribe rules imposing prudential
requirements (including activity restrictions) on swap dealers, major swap participants,
security-based swap dealers, or major security-based swap participants for which there is
a Prudential Regulator. This provision shall not be construed as limiting the authority of
the Commission and the Securities and Exchange Commission to prescribe appropriate
business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—
“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

“(2) JOINT RULES.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing
capital and margin requirements under this subsection for swap dealers and major
swap participants for which there is no Prudential Regulator.

“(3) CAPITAL.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—In setting
capital requirements under this subsection, the Prudential Regulators shall
impose:

“(i) a capital requirement that is greater than zero for swaps that
are cleared by a derivatives clearing organization; and

“(ii) to offset the greater risk to the swap dealer or major swap
participant and to the financial system arising from the use of swaps that
are not centrally cleared, higher capital requirements for swaps that are not
cleared by a registered derivatives clearing organization than for swaps
that are centrally cleared.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital
requirements set by the Commission and the Securities and Exchange
Commission under this subsection shall be as strict as or stricter than the capital
requirements set by the Prudential Regulators under this subsection.

“(C) BANK HOLDING COMPANIES.—Capital requirements set by the Board
for swaps of bank holding companies and Tier 1 financial holding companies on a
consolidated basis shall be as strict as or stricter than the capital requirements set
by the Prudential Regulators under this subsection.

“(4) MARGIN.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.— The
Prudential Regulators shall impose both initial and variation margin requirements under this subsection on all swaps that are not cleared by a registered derivatives clearing organization, except that the Prudential Regulators may, but are not required to, impose margin requirements with respect to swaps in which one of the counterparties is—

“(i) neither a swap dealer, major swap participant, security-based swap dealer nor a major security-based swap participant;

“(ii) using the swap as part of an effective hedge under generally accepted accounting principles; and

“(iii) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Margin requirements for swaps set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than margin requirements for swaps set by the Prudential Regulators.

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which

“(i) there is a Prudential Regulator shall keep books and records of
all activities related to its business as a swap dealer or major swap
participant in such form and manner and for such period as may be
prescribed by the Commission by rule or regulation;
“(ii) there is no Prudential Regulator shall keep books and records
in such form and manner and for such period as may be prescribed by the
Commission by rule or regulation; and
“(C) shall keep such books and records open to inspection and
examination by any representative of the Commission.
“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Commission and the Securities and Exchange
Commission, in consultation with the appropriate Federal banking agencies, shall jointly
adopt rules governing reporting and recordkeeping for swap dealers, major swap
participants, security-based swap dealers, and major security-based swap participants.
“(g) DAILY TRADING RECORDS.—
“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall
maintain daily trading records of its swaps and all related records (including related cash
or forward transactions) and recorded communications including but not limited to
electronic mail, instant messages, and recordings of telephone calls, for such period as
may be prescribed by the Commission by rule or regulation.
“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such
information as the Commission shall prescribe by rule or regulation.
“(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap
participant shall maintain daily trading records for each customer or counterparty in such
manner and form as to be identifiable with each swap transaction.

“(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of its business as a swap dealer;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an
eligible contract participant;

“(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of:

“(i) information about the material risks and characteristics of the swap;

“(ii) the source and amount of any fees or other material remuneration that the swap dealer or major swap participant would directly or indirectly expect to receive in connection with the swap; and

“(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

“(3) RULES.—The Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009.

“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—
“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

“(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

“(B) swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to swaps; and

“(D) other information relevant to its trading in swaps.

“(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any
necessary information to perform any of the functions described in this section;

and

“(B) provide the information to the Commission and to the Prudential
Regulator for such swap dealer or major swap participant, as applicable, upon
request.

“(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall
implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the
activities of any person within the firm relating to research or analysis of the price
or market for any commodity are separated by appropriate informational
partitions within the firm from the review, pressure, or oversight of those whose
involvement in trading or clearing activities might potentially bias their judgment
or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve
the purposes of this Act, the swap dealer or major swap participant shall avoid—

“(A) adopting any processes or taking any actions that result in any
unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”.

“(k) RULES.—The Commission, the Securities and Exchange Commission, and the
Prudential Regulators shall consult with each other prior to adopting any rules under the Over-
the-Counter Derivatives Markets Act of 2009.”.

SEC. 718. CONFLICTS OF INTEREST.
Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

“(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(2) address such other issues as the Commission determines appropriate.”.

SEC. 719. ALTERNATIVE SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by inserting after section 5g the following:

“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—

“(1) IN GENERAL.—No person may operate a facility for the trading of swaps unless the facility is registered as an alternative swap execution facility under this section.

“(2) DUAL REGISTRATION.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as an alternative swap execution facility.

“(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is
registered under subsection (a) may trade any swap.

“(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the contract market and the alternative swap execution facility, identify whether the electronic trading is taking place on the contract market or the alternative swap execution facility.

“(d) CRITERIA FOR REGISTRATION.—

“(1) IN GENERAL.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

“(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.
“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

“(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

“(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—
“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, and to eliminate or prevent excessive speculation as described in section 4a(a), the swap execution facility shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

“(B) For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

“(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

“(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

“(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall
maintain records of all activities related to the business of the facility, including a
complete audit trail, in a form and manner acceptable to the Commission for a period of 5
years, and report to the Commission all information determined by the Commission to be
necessary or appropriate for the Commission to perform its responsibilities under this Act
in a form and manner acceptable to the Commission. The Commission shall adopt data
collection and reporting requirements for alternative swap execution facilities that are
comparable to corresponding requirements for derivatives clearing organizations and
swap repositories.

“(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve
the purposes of this Act, the swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any
unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap
execution facility.

“(11) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its
decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(12) DESIGNATION OF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each alternative swap execution facility shall
designate an individual to serve as a compliance officer.

“(B) DUTIES.—The compliance officer shall—

“(i) report directly to the board or to the senior officer of the
facility; and

“(ii) shall—

“(I) review compliance with the core principles in section 5h(e).

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

“(iii) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such
compliance report shall accompany the financial reports of the facility that are
required to be furnished to the Commission pursuant to this section and shall
include a certification that, under penalty of law, the report is accurate and
complete.

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an
alternative swap execution facility from registration under this section if the Commission finds
that such facility is subject to comparable, comprehensive supervision and regulation on a
consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the
appropriate governmental authorities in the organization’s home country.

“(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-
Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange
Commission shall jointly prescribe rules governing the regulation of alternative swap execution
facilities under this section and section 3B of the Securities Exchange Act of 1934 (15 U.S.C.
78c-2).”.

SEC. 720. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT
BOARDS OF TRADE.

Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1, et seq.) are repealed.

SEC. 721. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking
paragraph (9) and inserting the following:

“(9) EXECUTION OF TRANSACTIONS.—

“(A) The board of trade shall provide a competitive, open, and efficient
market and mechanism for executing transactions that protects the price discovery
process of trading in the board of trade’s centralized market.

“(B) The rules may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;

“(ii) an exchange of

“(I) futures in connection with a cash commodity transaction;

“(II) futures for cash commodities; or

“(III) futures for swaps; or

“(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.”.

(b) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding after paragraph (18) the following:

“(19) FINANCIAL RESOURCES.—The board of trade shall demonstrate that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade’s financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of one year, calculated on a rolling basis.

“(20) SYSTEM SAFEGUARDS.—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of
appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.”.

SEC. 722. MARGIN.

Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended in paragraph (7)(C), by striking“, excepting the setting of levels of margin”.

SEC. 723. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting“(1)” after“(a),”;

(2) striking“on electronic trading facilities with respect to a significant price discovery contract” in the first sentence and inserting“swaps that perform or affect a significant price discovery function with respect to regulated markets”;

(3) inserting“, including any group or class of traders,” in the second sentence after“held by any person”;

(4) striking“on an electronic trading facility with respect to a significant price discovery contract,” in the second sentence and inserting“swaps that perform or affect a
significant price discovery function with respect to regulated markets,”; and

(5) inserting at the end the following:

“(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

“(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

“(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position;

“(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market
based upon the same underlying commodity so as to permit market participants to
effectively arbitrage between the markets by simultaneously maintaining positions
or executing trades in the swaps on a frequent and recurring basis;

“(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent
and recurring basis, bids, offers, or transactions in a contract traded on a regulated
market are directly based on, or are determined by referencing, the price
generated by the swap;

“(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps
being traded in the commodity is sufficient to have a material effect on another
contract traded on a regulated market; and

“(E) OTHER MATERIAL FACTORS.—Such other material factors as the
Commission specifies by rule or regulation as relevant to determine whether a
swap serves a significant price discovery function with respect to a regulated
market.

“(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt,
conditionally or unconditionally, any person or class of persons, any swap or class of
swaps, or any transaction or class of transactions from any requirement it may establish
under this section with respect to position limits.”.

(b) Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or
facilities or electronic trading facility” and inserting “or alternative swap execution
facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or
facilities or electronic trading facility” and inserting “or alternative swap execution facility”.

SEC. 724. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking “The board of trade shall have” and inserting “Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have”.

(b) Section 5b(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)(A)) is amended by striking “The applicant shall have” and inserting “Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the applicant shall have”.

(c) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended—

(1) in paragraph (1), by striking “5a(d) and 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”;

and

(2) in paragraph (2), by striking “shall not” and inserting “may”.

(d) Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(1)) is amended by inserting “(A)” after “IN GENERAL.—” and adding at the end the following:

“(B) Unless section 805(e) of the Payment, Clearing, and Settlement Supervision Act of 2009 applies, the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment shall become effective, pursuant to the registered entity’s certification, 10 business days after the Commission’s receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an
inadequate explanation by the submitting registered entity, or a potential
inconsistency with this Act (including regulations under this Act).

“(C) A notification by the Commission pursuant to subparagraph (B) shall
stay the certification of the new contract or instrument or clearing of the new
contract or instrument, new rule or new amendment for up to an additional 90
days from the date of such notification.”.

(e) Section 5c(d) of the Commodity Exchange Act (7 U.S.C. 7a-2(d)) is repealed.

SEC. 725. FOREIGN BOARDS OF TRADE.

(a) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by striking
“No rule or regulation” and inserting “Except as provided in paragraphs (1) and (2), no rule or
regulation”.

(b) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by
inserting before “The Commission” the following:

“(1) REGISTRATION. — The Commission may adopt rules and regulations requiring
registration with the Commission for a foreign board of trade that provides the members
of the foreign board of trade or other participants located in the United States direct
access to the electronic trading and order matching system of the foreign board of trade,
including rules and regulations prescribing procedures and requirements applicable to the
registration of such foreign boards of trade. For purposes of this paragraph, “direct
access” refers to an explicit grant of authority by a foreign board of trade to an identified
member or other participant located in the United States to enter trades directly into the
trade matching system of the foreign board of trade.

“(2) LINKED CONTRACTS. — It shall be unlawful for a foreign board of trade to
provide to the members of the foreign board of trade or other participants located in the
United States direct access to the electronic trading and order-matching system of the
foreign board of trade with respect to an agreement, contract, or transaction that settles
against any price (including the daily or final settlement price) of 1 or more contracts
listed for trading on a registered entity, unless the Commission determines that—

“(A) the foreign board of trade makes public daily trading information
regarding the agreement, contract, or transaction that is comparable to the daily
trading information published by the registered entity for the 1 or more contracts
against which the agreement, contract, or transaction traded on the foreign board
of trade settles; and

“(B) the foreign board of trade (or the foreign futures authority that
oversees the foreign board of trade)—

“(i) adopts position limits (including related hedge exemption
provisions) for the agreement, contract, or transaction that are comparable
to the position limits (including related hedge exemption provisions)
adopted by the registered entity for the 1 or more contracts against which
the agreement, contract, or transaction traded on the foreign board of trade
settles;

“(ii) has the authority to require or direct market participants to
limit, reduce, or liquidate any position the foreign board of trade (or the
foreign futures authority that oversees the foreign board of trade)
determines to be necessary to prevent or reduce the threat of price
manipulation, excessive speculation as described in section 4a, price
distortion, or disruption of delivery or the cash settlement process;

“(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

“(I) the information that the foreign board of trade will make publicly available;

“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract,
or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

“(3) EXISTING FOREIGN BOARDS OF TRADE.—Paragraphs (1) and (2) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

“(4) PERSONS LOCATED IN THE UNITED STATES.—”.

(c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of the Commodity Exchange Act (7. U.S.C. 6(a)) is amended by inserting “or by subsection (f)” after “Unless exempted by the Commission pursuant to subsection (c)”;

(2) Section 4 of the Commodity Exchange Act (7 U.S.C 6) is further amended by adding at the end the following:

“(f) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subsections (b)(1) and (b)(2).”.

(d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:
“(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”.

SEC. 726. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

“(A) No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and

“(B) No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the
definition of a swap set forth in section 1a or to be cleared pursuant to section 2(j)(1).”.

SEC. 727. MULTILATERAL CLEARING ORGANIZATIONS.

(a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 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, or exempted under section 2(h) or 4(c) of such Act” and inserting “section 2(c) or 2(f) of such Act”;

(b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421) is further amended by inserting at the end the following:

“(4) The term “over-the-counter derivative instrument” does not include a swap or a security-based swap as defined in sections 1a(35) and 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and 1a(38)).”.

SEC. 728. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by adding the following new section after section 4b:

“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.

“(a) CFTC.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of Subtitle A of the Over-the-Counter Derivatives Market Act of 2009 with respect to any person.

“(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.
“(c) REFERRAL.—If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that such swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90 day period beginning on the date on which the Commission receives a recommendation under subsection (c), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.”.

SEC. 729. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”; and

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”;

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting “or swap” before “if the transaction is used or may be used”; 

(d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting “or of any swap,” before “or to corner”;

(e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by
inserting “swap repository,” before “or futures association”;

(f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended by inserting “swap repository,” before “or registered futures association” and by inserting “, or swaps,” before “on the basis”; and

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding the following new paragraph (6) and renumber existing paragraphs (6) through (10) as (7) through (11):

“(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository or alternative swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Over-the-Counter Derivatives Markets Act of 2009.”.

SEC. 730. RETAIL COMMODITY TRANSACTIONS.

Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking “(to the extent provided in section 5a(g), 5b, 5d, or 12(e)(2)(B))” and inserting “5b, or 12(e)(2)(B))”;

(2) in paragraph (2), by inserting after subparagraph (C) the following:

“(D) RETAIL COMMODITY TRANSACTIONS.—

“(i) This subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

“(l) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible
commercial entity; and

“(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

“(ii) Clause (i) shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

“(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.”.

SEC. 731. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by adding after section 4s
“(as added by section 717) the following:

“SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to regulated markets if—

“(1) such person shall directly or indirectly enter into such swaps during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

“(2) such person shall directly or indirectly have or obtain a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

“unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, such person shall keep books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

“(b) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(c) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly
or indirectly controlled by such person.

“(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).”.

SEC. 732. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 733. ANTITRUST.

Nothing in the amendments made by this title shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term “antitrust laws” has the same meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

SEC. 734. EFFECTIVE DATE.

This title is effective 180 days after the date of enactment.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 751. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting “(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after the word “securities” in each place it appears;

(2) in paragraph (10), by inserting “security-based swap,” after “security future,”;
(3) in paragraph (13), by adding at the end the following:

“For security-based swaps, such terms include the execution, termination (prior to
its scheduled maturity date), assignment, exchange, or similar transfer or
conveyance of, or extinguishing of rights or obligations under, a security-based
swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following:

“For security-based swaps, such terms include the execution, termination (prior to
its scheduled maturity date), assignment, exchange, or similar transfer or
conveyance of, or extinguishing of rights or obligations under, a security-based
swap, as the context may require.”;

(5) in paragraph (39)—

(A) by striking “or government securities dealer” and adding “government
securities dealer, security-based swap dealer or major security-based swap
participant” in its place in subparagraph (B)(i)(I);

(B) by adding “security-based swap dealer, major security-based swap
participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

(C) by striking “or government securities dealer” and adding “government
securities dealer, security-based swap dealer or major security-based swap
participant” in its place in subparagraph (C); and

(D) by adding “security-based swap dealer, major security-based swap
participant,” after “government securities dealer,” in subparagraph (D); and

(6) by adding at the end the following:

“(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’
has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap participant’ has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

“(68) SECURITY-BASED SWAP—The term ‘security-based swap’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

“(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ has the same meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

“(71) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).

“(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal
Reserve System.

“(74) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

“(75) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

“(76) SECURITY-BASED SWAP AGREEMENT.—

“(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

“(B) EXCLUSIONS.—The term ‘security-based swap agreement’ does not include any security-based swap.”.

SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed and the section is reserved;

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that such term appears;

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—
(i) by inserting “(including security-based swaps)” after “securities”; and

(ii) by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”; and

(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The

(1) Section 3A (15 U.S.C. 78c-1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

“(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market
operations of any one or more persons conducted for the purpose of raising or depressing
the price of such security.

“(4) If a dealer, broker, security-based swap dealer, major security-based swap
participant or other person selling or offering for sale or purchasing or offering to
purchase the security, to make, regarding any security registered on a national securities
exchange or any security-based swap with respect to such security, for the purpose of
inducing the purchase or sale of such security or such security-based swap, any statement
which was at the time and in the light of the circumstances under which it was made,
false or misleading with respect to any material fact, and which he knew or had
reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a dealer, broker,
security-based swap dealer, major security-based swap participant or other person selling
or offering for sale or purchasing or offering to purchase the security, to induce the
purchase of any security registered on a national securities exchange or any security-
based swap with respect to such security by the circulation or dissemination of
information to the effect that the price of any such security will or is likely to rise or fall
because of the market operations of any one or more persons conducted for the purpose
of raising or depressing the price of such security.”.

(3) Section 10 (15 U.S.C. 78j) is amended by striking “(as defined in section
206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

(4) Section 15(c)(1) is amended—

(A) in subparagraph (A, by striking “, or any security-based swap
agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),”; and
(B) in subparagraphs (B) and (C), by striking “agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears;

(5) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(6) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of the Gramm-Leach-Bliley Act)”;

(B) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears;

(C) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(7) Section 20 (15 U.S.C. 78t) is amended —

(A) in subsection (d), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”; and,

(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(8) Section 21A (15 U.S.C. 78u-1) is amended—

(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” and,

(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.
(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3:

"SEC. 3A. CLEARING FOR SECURITY-BASED SWAPS.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (7), it shall be unlawful to enter into a security-based swap that is standardized unless—

(A) the security-based swap is cleared by a clearing agency registered under section 17A of this Act; and

(B) the rules of the clearing agency described in subparagraph (A) prescribe that all security-based swaps with the same terms and conditions are fungible and may be offset with each other.

(2) STANDARDIZATION IF CLEARED.—A security-based swap that is accepted for clearing by any clearing agency shall be presumed to be standardized.

(3) SECURITY-BASED SWAPS DESIGNATED AS STANDARDIZED.—

(A) JOINT RULES.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules to further define the term ‘standardized.’ In adopting such rules, the Commission and the Commodity Futures Trading Commission shall jointly define the term ‘standardized’ as broadly as possible, after taking into account the following factors:

(i) the extent to which any of the terms of the security-based swap, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions;
“(ii) the volume of transactions in the security-based swap;

“(iii) the extent to which the terms of the security-based swap are similar to the terms of other agreements, contracts, or transactions that are centrally cleared;

“(iv) whether any differences in the terms of the security-based swap, compared to other agreements, contracts, or transactions that are centrally cleared, are of economic significance; and

(v) any other factors the Commission and Commodity Futures Trading Commission determine to be appropriate.

“(B) The Commission may separately designate a particular security-based swap or class of security-based swaps as standardized, taking into account the factors enumerated in paragraphs (3)(i)-(v) and the joint rules adopted in subparagraph (A).

“(4) PREVENTION OF EVASION.— The Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this Act.

“(5) REQUIRED REPORTING.—Both counterparties to a security-based swap that is not accepted for clearing by any clearing agency shall report such a security-based swap either to a security-based swap repository described in subsection 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule or regulation prescribe.

“(6) TRANSITION RULES.—Rules adopted by the Commission under this section
shall provide for the reporting of data, as follows:

“(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

“(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of:

“(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(7) MANDATORY TRADING.—Except as provided in paragraph (8), a security-based swap that is standardized shall be traded on an exchange or an alternative swap execution facility registered under section 3B.

“(8) EXCEPTION.—The requirements of subsection (a)(1) and (7) do not apply to a security-based swap if—

“(A) no clearing agency will accept the security-based swap for clearing;

or

“(B) one of the counterparties to the security-based swap—

“(i) is not a security-based swap dealer or a major security-based
swap participant; and

“(ii) does not meet the eligibility requirements of any clearing agency that clears the security-based swap.

“(9) VOLUNTARY REGISTRATION.—

“(A) CLEARING AGENCIES.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

“(B) DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may clear swaps that are required to be cleared by a person who is registered as a derivatives clearing organization under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(10) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a clearing agency under this section shall register with the Commission regardless of whether the person is also a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(b) REPORTING.—

“(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on
alternative swap execution facilities. The Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

“(c) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“A report directly to the board or to the senior officer of the clearing agency; and

“B shall, in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

“C be responsible for administering the policies and procedures required to be established pursuant to this section; and

“D ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this
“(E) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(d) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.

“(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1, et seq.) and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.).”

(b) ALTERNATIVE SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934
(15 U.S.C. 78a, et seq.) is amended by adding after section 3A the following:

“SEC. 3B. ALTERNATIVE SWAP EXECUTION FACILITIES.

“(a) Registration.—

(1) In general.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as an alternative swap execution facility under this section.

“(2) Dual registration.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Commodity Futures Trading Commission as an alternative swap execution facility.

“(b) Requirements for Trading.—An alternative swap execution facility that is registered under subsection (a) may trade any security-based swap.

“(c) Trading by Exchanges.—An exchange shall, to the extent that the exchange also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the exchange and the alternative swap execution facility, identify whether the electronic trading is taking place on the exchange or the alternative swap execution facility.

“(d) Criteria for Registration.—

“(1) In general.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

“(2) Deterrence of Abuses.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

82
“(A) obtain information necessary to perform the functions required under this section; or

“(B) use means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

“(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation. Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and
conditions of the security-based swaps traded on or through the facility and any
limitations on access to the facility.

“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The
swap execution facility shall permit trading only in security-based swaps that are not
readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall monitor
trading in security-based swaps to prevent manipulation and price distortion through
surveillance, compliance, and disciplinary practices and procedures, including methods
for conducting real-time monitoring of trading and comprehensive and accurate trade
reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—
“(A) establish and enforce rules that will allow the facility to obtain any
necessary information to perform any of the functions described in this
subsection;
“(B) provide the information to the Commission upon request; and
“(C) have the capacity to carry out such international information-sharing
agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—
“(A) To reduce the potential threat of market manipulation or congestion,
the swap execution facility shall adopt for each of its contracts, where necessary
and appropriate, position limitations or position accountability.
“(B) For any contract that is subject to a position limitation established by
the Commission pursuant to section 10B, the swap execution facility shall set its
position limitation at a level no higher than the Commission limitation.

“(7) **EMERGENCY AUTHORITY.**—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

“(8) **TIMELY PUBLICATION OF TRADING INFORMATION.**—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

“(9) **RECORDKEEPING AND REPORTING.**—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

“(10) **ANTITRUST CONSIDERATIONS.**—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.
“(11) **CONFLICTS OF INTEREST.**—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(12) **DESIGNATION OF COMPLIANCE OFFICER.**—

“(A) **IN GENERAL.**—Each alternative swap execution facility shall designate an individual to serve as a compliance officer.

“(B) **DUTIES.**—The compliance officer shall—

“(i) report directly to the board or to the senior officer of the facility; and

“(ii) shall—

“(I) review compliance with the core principles in section 3B(e).

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.
“(iii) The compliance officer shall establish procedures for
remediation of non-compliance issues found during compliance office
reviews, lookbacks, internal or external audit findings, self-reported errors,
or through validated complaints. Procedures will establish the handling,
management response, remediation, re-testing, and closing of non-
compliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually
prepare and sign a report on the compliance of the facility with the securities laws
and its policies and procedures, including its code of ethics and conflict of interest
policies, in accordance with rules prescribed by the Commission. Such
compliance report shall accompany the financial reports of the facility that are
required to be furnished to the Commission pursuant to this section and shall
include a certification that, under penalty of law, the report is accurate and
complete.”;

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an
alternative swap execution facility from registration under this section if the Commission finds
that such organization is subject to comparable, comprehensive supervision and regulation on a
consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or
the appropriate governmental authorities in the organization’s home country.

“(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-
Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading
Commission shall jointly prescribe rules governing the regulation of alternative swap execution
facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b-3).”.
(c) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(l) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”.


“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

“(a) Registration.—

“(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

“(b) Requirements.—

“(1) In general.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) Contents.—The application shall be made in such form and manner as
prescribed by the Commission, giving any information and facts as the Commission may
deem necessary concerning the business in which the applicant is or will be engaged.

Such person, when registered as a security-based swap dealer or major security-based
swap participant, shall continue to report and furnish to the Commission such information
pertaining to such person's business as the Commission may require.

“(3) EXPIRATION.—Each registration shall expire at such time as the Commission
may by rule or regulation prescribe.

“(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission
may prescribe rules applicable to security-based swap dealers and major security-based
swap participants, including rules that limit the activities of security-based swap dealers
and major security-based swap participants. Except as provided in subsections (c) and
(e), the Commission may provide conditional or unconditional exemptions from rules
prescribed under this section for security-based swap dealers and major security-based
swap participants that are subject to substantially similar requirements as brokers or
dealers.

“(5) TRANSITION.—Rules adopted under this section shall provide for the
registration of security-based swap dealers and major security-based swap participants no
later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act
of 2009.

“(c) DUAL REGISTRATION.—

“(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be
registered as a security-based swap dealer under this section shall register with the
Commission regardless of whether that person also is a bank or is registered with the
Commodity Futures Trading Commission as a swap dealer.

“(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required
to be registered as a major security-based swap participant under this section shall
register with the Commission regardless of whether that person also is a bank or is
registered with the Commodity Futures Trading Commission as a major swap participant.

“(d) JOINT RULES.—

“(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-
the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity
Futures Trading Commission shall jointly adopt uniform rules for persons that are
registered as security-based swap dealers or major security-based swap participants under
this Act and persons that are registered as swap dealers or major swap participants under
the Commodity Exchange Act (7 U.S.C. 1, \textit{et seq.}).

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the
Commodity Futures Trading Commission shall not prescribe rules imposing prudential
requirements (including activity restrictions) on security-based swap dealers or major
security-based swap participants for which there is a Prudential Regulator. This
provision shall not be construed as limiting the authority of the Commission and the
Commodity Futures Trading Commission to prescribe appropriate business conduct,
reporting, and recordkeeping requirements to protect investors.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED
SWAP PARTICIPANTS.—Each registered security-based swap dealer and major
security-based swap participant for which there is a Prudential Regulator shall
meet such minimum capital requirements and minimum initial and variation
margin requirements as the Prudential Regulators shall by rule or regulation
jointly prescribe to help ensure the safety and soundness of the security-based
swap dealer or major security-based swap participant.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-
BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and
major security-based swap participant for which there is not a Prudential
Regulator shall meet such minimum capital requirements and minimum initial and
variation margin requirements as the Commission and the Commodity Futures
Trading Commission shall by rule or regulation jointly prescribe to help ensure
the safety and soundness of the security-based swap dealer or major security-
based swap participant.

“(2) JOINT RULES.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED
SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with
the Commission and the Commodity Futures Trading Commission, shall jointly
adopt rules imposing capital and margin requirements under this subsection for
security-based swap dealers and major security-based swap participants.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-
BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-
Counter Derivatives Markets Act of 2009, the Commission and the Commodity
Futures Trading Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

“(3) CAPITAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose:

“(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

“(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not centrally cleared, higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

“(C) BANK HOLDING COMPANIES.—Capital requirements set by the Board for security-based swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential
Regulators under this subsection.

“(4) MARGIN.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The Prudential Regulators shall impose both initial and variation margin requirements under this subsection on all security-based swaps that are not cleared by a registered clearing agency, except that the Prudential Regulators may, but are not required to, impose margin requirements with respect to security-based swaps in which—

“(i) one of the counterparties is not a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant;

“(ii) the counterparty is using the security-based swap as part of an effective hedge under generally accepted accounting principles; and

“(iii) the counterparty is predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Prudential Regulators.

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major
security-based swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which—

“(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based
swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

“(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—
“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into); 

“(B) diligent supervision of its business as a security-based swap dealer; 

“(C) adherence to all applicable position limits; and 

“(D) such other matters as the Commission shall determine to be necessary or appropriate. 

“(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant; 

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of: 

“(i) information about the material risks and characteristics of the security-based swap; 

“(ii) the source and amount of any fees or other material remuneration that the security-based swap dealer or major security-based swap participant would directly or indirectly expect to receive in connection with the security-based swap; and 

“(iii) any other material incentives or conflicts of interest that the
security-based swap dealer or major security-based swap participant may
have in connection with the security-based swap; and
“(C) establish such other standards and requirements as the Commission
may determine are necessary or appropriate in the public interest, for the
protection of investors, or otherwise in furtherance of the purposes of this title.
“(3) RULES.—The Commission and the Commodity Futures Trading
Commission, in consultation with the appropriate Federal banking agencies, shall jointly
prescribe rules under this subsection governing business conduct standards for swap
dealers, major swap participants, security-based swap dealers, and major security-based
swap participants within 365 days of the enactment of the Over-the-Counter Derivatives
“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—
“(1) IN GENERAL.—Each registered security-based swap dealer and major
security-based swap participant shall conform with standards, as may be prescribed by
the Commission by rule or regulation, addressing timely and accurate confirmation,
processing, netting, documentation, and valuation of all security-based swaps.
“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading
Commission, in consultation with the appropriate Federal banking agencies, shall jointly
adopt rules governing documentation and back office standards for swap dealers, major
swap participants, security-based swap dealers, and major security-based swap
participants.
“(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major
security-based swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

“(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

“(A) terms and conditions of its security-based swaps;

“(B) security-based swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to security-based swaps; and

“(D) other information relevant to its trading in security-based swaps.

“(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—
“(A) establish structural and institutional safeguards to assure that the
activities of any person within the firm relating to research or analysis of the price
or market for any security are separated by appropriate informational partitions
within the firm from the review, pressure, or oversight of those whose
involvement in trading or clearing activities might potentially bias their judgment
or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve
the purposes of this Act, the security-based swap dealer or major security-based swap
 participant shall avoid—

“(A) adopting any processes or taking any actions that result in any
 unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”.

“(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the
Prudential Regulators shall consult with each other prior to adopting any rules under the Over-

“(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically
provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-
based swap dealer or a major security-based swap participant to permit any person associated
with a security-based swap dealer or a major security-based swap participant who is subject to a
statutory disqualification to effect or be involved in effecting security-based swaps on behalf of
such security-based swap dealer or major security-based swap participant, if such security-based
swap dealer or major security-based swap participant knew, or in the exercise of reasonable care
should have known, of such statutory disqualification.

“(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

“(1) PRIMARY ENFORCEMENT AUTHORITY.—

“(A) SEC.—Except as provided in subsection (b), the Commission shall have primary authority to enforce the provisions of Subtitle B of the Over-the-Counter Derivatives Market Act of 2009 with respect to any person.

“(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

“(C) REFERRAL.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(D) BACKSTOP ENFORCEMENT AUTHORITY. —If the Commission does not initiate an enforcement proceeding before the end of the 90 day period beginning on the date on which the Commission receives a recommendation under
subparagraph (C), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.

“(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or rejection is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation,
enumerated in subparagraph (G) of such paragraph (4).

“(3) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation,
enumerated in subparagraph (G) of such paragraph (4).

“(4) It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.”.

(e) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—

Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1) – (3)) are amended to read as follows:

“(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or (C) any security-based swap involving the security or the issuer of the security; or

“(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or
“(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.”.

(f) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—

Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person.

The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.

(g) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—

The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j-1) the following new section:

“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.
“(a) AGGREGATE POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions that may be held by any person or persons across—

“(1) securities listed on a national securities exchange; and

“(2) security-based swaps that perform or affect a significant price discovery function with respect to regulated markets.

“(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

“(c) SRO RULES.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization:

“(1) to adopt rules regarding the size of positions in any security-based swap and any security on which such security-based swap is based that may be held by (A) any member of such self-regulatory organization or (B) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap or other security; and

“(2) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under paragraph (a).”.

105
“(d) LARGE SECURITY-BASED SWAP TRADER REPORTING.—

“(1) It shall be unlawful for any person to enter into any security-based swap that performs or affects a significant price discovery function with respect to regulated markets if—

“(A) such person shall directly or indirectly enter into such security-based swaps during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

“(B) such person shall directly or indirectly have or obtain a position in such security-based swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

“unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, such person shall keep books and records of all such security-based swaps and any transactions and positions in any related security traded on or subject to the rules of any national securities exchange, and of purchase and sale commitments of, such a security.

“(2) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(3) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(4) For the purpose of this subsection, the security-based swaps, and securities transactions and positions of any person shall include such security-based swaps,
transactions and positions of any persons directly or indirectly controlled by such person.

“(e) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a
security-based swap performs or affects a significant price discovery function with respect to
regulated markets, the Commission shall consider, as appropriate:

“(1) PRICE LINKAGE.—The extent to which the security-based swap uses or
otherwise relies on a daily or final settlement price, or other major price parameter, of a
security traded on a national securities exchange, to value a position, transfer or convert a
position, financially settle a position, or close out a position;

“(2) ARBITRAGE.—The extent to which the price for the security-based swap is
sufficiently related to the price of a security traded on a national securities exchange so as
to permit market participants to effectively arbitrage between the markets by
simultaneously maintaining positions or executing trades in both markets on a frequent
and recurring basis;

“(3) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and
recurring basis, bids, offers, or transactions in a security traded on a national securities
exchange are directly based on, or are determined by referencing, the price generated by
the security-based swap;

“(4) MATERIAL LIQUIDITY.—The extent to which the volume of security-based
swaps being traded is sufficient to have a material effect on a security traded on a
national securities exchange; and

“(5) OTHER MATERIAL FACTORS.—Such other material factors as the Commission
specifies by rule or regulation as relevant to determine whether a security-based swap
serves a significant price discovery function with respect to a regulated market.
Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

“(1) IN GENERAL.— The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3);

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) clearing agencies pursuant to section 3A;

“(B) security-based swap repositories pursuant to subsection (n); and

“(C) reports received by the Commission pursuant to section 13A.

“(n) SECURITY-BASED SWAP REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—

“(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.
“(B) Inspection and Examination.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

“(2) Standard Setting.—

“(A) Data Identification.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

“(B) Data Collection and Maintenance.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

“(C) Comparability.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

“(3) Duties.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

“(B) maintain such data in such form and manner and for such period as may be required by the Commission;

“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

“(D) make available, on a confidential basis, all data obtained by the
security-based swap repository, including individual counterparty trade and
position data, to the Commission, the appropriate Federal banking agencies, the
Commodity Futures Trading Commission, the Financial Services Oversight
Council, and the Department of Justice or to other persons the Commission deems
appropriate, including foreign financial supervisors (including foreign futures
authorities), foreign central banks, and foreign ministries.

“(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any
person that is required to be registered as a securities-based swap repository under this
subsection shall register with the Commission, regardless of whether that person also is
registered with the Commodity Futures Trading Commission as a swap repository.

“(5) HARMONIZATION OF RULES.—Not later than 180 days after the effective date
of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the
Commodity Futures Trading Commission shall jointly adopt uniform rules governing
persons that are registered under this section and persons that are registered as swap
repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform
rules that specify the data elements that shall be collected and maintained by each
repository.

“(6) EXEMPTIONS.—The Commission may exempt, conditionally or
unconditionally, a security-based swap repository from the requirements of this section if
the Commission finds that such security-based swap repository is subject to comparable,
comprehensive supervision or regulation on a consolidated basis by the Commodity
Futures Trading Commission, a Prudential Regulator or the appropriate governmental
authorities in the organization’s home country.”.
SEC. 754. REPORTING AND RECORDKEEPING.

(a) The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

“(a) IN GENERAL.—Any person who enters into a security-based swap and—

“(1) did not clear the security-based swap in accordance with section 3A; and

“(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than
the Commission requires security-based swap repositories to collect under subsection (n).”.

(b) **Beneficial Ownership Reporting.**

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule” after “subsection (d)(1) of this section”.

(c) **Reports by Institutional Investment Managers.**—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule,” after “subsection (d)(1) of this section”.

(d) **Administrative Proceeding Authority.**—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and

(2) in subparagraph (F), by adding “, or security-based swap dealer, or a major security-based swap participant” after “or dealer”.

112
(e) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16(f) of the Securities Exchange Act of 1934 (15 U.S.C.78p) is amended by inserting “or security-based swaps” after “security futures products”.

SEC. 755. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or
distribution of securities shall apply to any transaction in a security-based swap or a security
futures product, except that this sentence shall not be construed as limiting any State antifraud
law of general applicability.”.

SEC. 756. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF
SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is
amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3) by adding at the end the following:

“Any offer or sale of a security-based swap by or on behalf of the issuer of the securities
upon which such security-based swap is based or is referenced, an affiliate of the issuer,
or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to
sell such securities,”;

(3) by adding at the end the following:

“(17) The terms “swap” and “security-based swap” have the same meanings as
provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35)
and (38)).

“(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to
mean the execution, termination (prior to its scheduled maturity date), assignment,
exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations
under, a security-based swap, as the context may require.”.

(b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933
(15 U.S.C. 77e) is amended by adding at the end the following:
“(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).”.

SEC. 757. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 758. JURISDICTION.

Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

“(c) DERIVATIVES.—The Commission shall not have the authority to grant exemptions from the security-based swap provisions of the Over-the-Counter Derivatives Market Act of 2009, except as expressly authorized under the provisions of that Act.”.
TITLE VIII—PAYMENT, CLEARING AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2009”.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary to provide consistency, to promote robust risk management and safety and soundness, to reduce systemic risks, and to support the stability of the broader financial system.
(b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors of the Federal Reserve System to prescribe uniform standards for the management of risks by systemically important financial market utilities and for the conduct of systemically important payment, clearing and settlement activities by financial institutions;

(2) providing the Board of Governors of the Federal Reserve System an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors of the Federal Reserve System an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

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

(1) AFFILIATE.—The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

(2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial regulator” means—

(A) the Comptroller of the Currency, with respect to national banks and any Federal branch or Federal agency of a foreign bank, until the functions of the Comptroller of the Currency are transferred to the Director of the National Bank
Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities;

(B) the Board of Directors of the Corporation, with respect to state-chartered banks insured by the Corporation (other than member banks of the Federal Reserve System) and insured State branches of foreign banks;

(C) the Director of the Office of Thrift Supervision, with respect to any savings association and any savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred to the Director of the National Bank Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities;

(D) the Board, with respect to member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq. or § 611 et seq.), and bank holding companies and their nonbank subsidiaries (except brokers, dealers, investment companies, and investment advisers registered with the Securities and Exchange Commission, and futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission);

(E) the National Credit Union Administration Board, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 et seq.);
(F) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.);

(ii) any investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); and

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et seq.);

(G) the Commodity Futures Trading Commission, with respect to futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 et seq.);

(H) the applicable State insurance authority, with respect to any financial institution engaged in providing insurance under State insurance law; and

(I) the Board, with respect to any other financial institution engaged in a designated activity.

(3) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(4) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,
clearing, or settlement activity that the Board has designated as systemically important under section 804.

(6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial market utility” means a financial market utility that the Board has designated as systemically important under section 804.

(7) FINANCIAL INSTITUTION.—The term “financial institution” means—

(A) a depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813);

(B) a branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) (12 U.S.C. § 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq. and § 611 et seq.);

(D) a credit union (as defined in section 101 of the Federal Credit Union Act) (12 U.S.C. § 1752);

(E) a broker or dealer (as defined in section 3 of the Securities Exchange Act of 1934) (15 U.S.C. § 78c);

(F) an investment company (as defined in section 3 of the Investment Company Act of 1940) (15 U.S.C. § 80a-3);

(G) an insurance company (as defined in section 2 of the Investment Company Act of 1940) (15 U.S.C. § 80a-2);

(H) an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) (15 U.S.C. § 80b-2);

(I) a futures commission merchant, commodity trading advisor, or
commodity pool operator (as defined in section 1a of the Commodity Exchange
Act) (7 U.S.C. § 1a); and

(J) any company engaged in activities that are financial in nature or
incidental to a financial activity, as described in section 4 of the Bank Holding
Company Act of 1956 (12 U.S.C. § 1843(k)).

(8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any
person that manages or operates a multilateral system for the purpose of transferring,
clearing, or settling payments, securities, or other financial transactions among financial
institutions or between financial institutions and the person.

(9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment,
clearing, or settlement activity” means an activity carried out by one or more financial
institutions to facilitate the completion of financial transactions. Financial transactions
include funds transfers, securities contracts, contracts of sale of a commodity for future
delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange
contracts, financial derivatives contracts, and any similar transaction that the Board
determines, by rule or order, to be a financial transaction for purposes of this title. When
conducted with respect to financial transactions, payment, clearing, and settlement
activities may include the calculation and communication of unsettled obligations
between counterparties; the netting of transactions; provision and maintenance of trade,
contract, or instrument information; the management of risks and activities associated
with continuing obligations; transmittal and storage of payment instructions; the
movement of funds; the final settlement of obligations; and other similar functions.

(10) PERSON.—The term “person” means any corporation, company, association,
firm, partnership, society, joint stock company, or other legal entity other than a natural
person.

(11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(12) STATE.—The term “State” means any State, commonwealth, territory, or
possession of the United States, the District of Columbia, the Commonwealth of Puerto
Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or
the United States Virgin Islands.

(13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal
agency that has primary jurisdiction over a designated financial market utility under
Federal banking, securities, or commodity futures laws, including—

(A) the Securities and Exchange Commission, with respect to a designated
financial market utility that is a clearing agency registered with the Securities and
Exchange Commission;

(B) the Commodity Futures Trading Commission, with respect to a
designated financial market utility that is a derivatives clearing organization
registered with the Commodity Futures Trading Commission;

(C) the Board of Directors of the Corporation, with respect to a designated
financial market utility that is an insured State nonmember bank or an insured
branch of a foreign bank;

(D) the Comptroller of the Currency, with respect to a designated financial
market utility that is a national bank or a Federal branch (other than an insured
branch) or a Federal agency of a foreign bank, until the functions of the
Comptroller of the Currency are transferred to the Director of the National Bank
Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities; and

(E) the Director of the Office of Thrift Supervision, with respect to a designated financial market utility that is a savings association or a savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred to the Director of the National Bank Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities.

(14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) BOARD.—The Board, on a nondelegable basis, shall designate a financial market utility or a payment, clearing, or settlement activity that it determines is, or is likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Board shall take into consideration the following:

(A) the aggregate monetary value of transactions processed by the
financial market utility or carried out through the payment, clearing, or settlement activity;

(B) the relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities;

(C) the effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system;

(D) the recommendation, if any, of the Financial Services Oversight Council; and

(E) any other factors that the Board deems appropriate.

(b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Board determines that the utility or activity no longer meets the standards for systemic importance. Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or rules or orders prescribed by the Board under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) FINANCIAL MARKET UTILITY.—Before making any determination under subsection (a) or (b) with regard to a financial market utility, the Board shall consult with the Financial Services Oversight Council and the relevant Supervisory Agency.

(2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any determination under subsection (a) or (b) with regard to a payment, clearing, or
settlement activity, the Board shall consult with the Financial Services Oversight Council.

(3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b) with regard to a financial market utility or a payment, clearing, or settlement activity, the Board shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the Board’s proposed determination.

(B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the Board’s proposed determination, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request in writing an opportunity for a written or oral hearing before the Board to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Board, oral testimony or oral argument.

(4) EMERGENCY EXCEPTION.—
(A) WAIVER OR MODIFICATION BY BOARD VOTE.—The Board may waive or modify the requirements of paragraph (3) if the Board determines, by an affirmative vote of not less than 5 members or, if there are fewer than five members then serving and available, by the unanimous vote of all available members then serving, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Board shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and three business days in the case of financial institutions. The Board shall provide the notice to financial institutions by posting a notice on the Board website and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the Board shall notify the financial market utility or financial institutions of its final determination in writing, which shall include findings of fact upon which the Board’s determination is based.

(2) WHEN NO HEARING REQUESTED.—If the Board does not receive a timely request for a hearing under subsection (c)(3), the Board shall notify the financial market utility or financial institutions of its final determination in writing not later than 30 days
SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board shall, by rule or order and in consultation with the Financial Services Oversight Council, the Commodity Futures Trading Commission, and the Securities and Exchange Commission, prescribe risk management standards governing the operations of designated financial market utilities and the conduct of designated activities by financial institutions, taking into consideration relevant international standards.

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as risk management policies and procedures, margin, collateral, capital, and default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, and other areas that the Board determines are necessary to achieve the objectives and principles in subsection (b).
(d) **COMPLIANCE REQUIRED.**—Designated financial market utilities and financial institutions engaged in designated activities shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board.

**SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

(a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—The Board may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(b) **ADVANCES.**—The Board may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(c) **EARNINGS ON FEDERAL RESERVE BALANCES.**—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(d) **RESERVE REQUIREMENTS.**—The Board may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. § 461) applicable to a designated financial market utility.

(e) **CHANGES TO RULES, PROCEDURES, OR OPERATIONS.**—

1. **REFERENCE.**—For purposes of paragraphs (2) and (3), all references to the
phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence
of a Supervisory Agency, the Board”.

(2) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated
financial market utility shall provide 60-days’ advance notice to its Supervisory
Agency or the Board of any proposed change to its rules, procedures, or
operations that could, as defined by the Board, materially affect the nature or level
of risks presented by the designated financial market utility.

(B) CONTENTS OF NOTICE.—The notice of a proposed change shall
describe the nature of the change and expected effects on risks to the designated
financial market utility, its participants, or the market, and how the designated
financial market utility plans to manage any identified risks.

(C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board
may require a designated financial market utility to provide any information
necessary to assess the effect the proposed change would have on the nature or
level of risks associated with the designated financial market utility's payment,
clearing, or settlement activities and the sufficiency of any proposed risk
management techniques.

(D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will
notify the designated financial market utility of any objection regarding the
proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of
the notice is received.

(E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board or the Supervisory Agency has an objection.

(F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board receives any further information it requests for consideration of the notice.

(G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (D) and (F).

(H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board, or the date the Supervisory Agency or the Board receives any further information it requested, if the Supervisory Agency or the Board
notifies the designated financial market utility in writing that it does not object to
the proposed change and authorizes the designated financial market utility to
implement the change on an earlier date, subject to any conditions imposed by the
Supervisory Agency or the Board.

(3) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a
change that would otherwise require advance notice under this subsection if it
determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the
designated financial market utility to continue to provide its services in a
safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial
market utility must provide notice of any such emergency change to its
Supervisory Agency or the Board, as soon as practicable, which shall be no later
than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information
required for changes requiring advance notice, the notice of an emergency change
must describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated
financial market utility to continue to provide its services in a safe and
sound manner.
(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board hereunder.

(4) COPYING THE BOARD.—In the case of a designated financial market utility that has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(5) CONSULTATION WITH BOARD.—Before taking any action on or completing its review of a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least annually in order to inform itself of the following:

(1) the nature of the operations of, and the risks borne by, the designated financial market utility;

(2) the financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system;

(3) the resources and capabilities of the designated financial market utility to monitor and control such risks;

(4) the safety and soundness of the designated financial market utility; and
(5) the designated financial market utility’s compliance with this title and the
rules and orders prescribed by the Board under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated
financial market utility is performed for the designated financial market utility by another entity,
whether an affiliate or non-affiliate and whether on or off the premises of the designated
financial market utility, the Supervisory Agency may examine whether the provision of that
service is in compliance with applicable law, rules, orders, and standards to the same extent as if
the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial
market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the
Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as
if the designated financial market utility were an insured depository institution for which the
Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the

(d) BOARD INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory
Agency shall consult with the Board regarding the scope and methodology of any
examination conducted under subsections (a) and (b).

(2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion,
participate in any examination led by a Supervisory Agency and conducted under
subsections (a) and (b).

(e) BOARD ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board may at any time recommend to the
Supervisory Agency that it take enforcement action against a designated financial market
utility. The recommendation shall provide a detailed analysis supporting the Board’s
recommendation.

(2) CONSIDERATION.—The Supervisory Agency shall consider the Board’s
recommendation and submit a response to the Board within 30 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the
Board’s recommendation, the Board may dispute the matter by referring it to the
Financial Services Oversight Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is
unable to resolve the dispute under paragraph (3) within 30 days from the date of referral,
the Board may exercise the enforcement authority referenced in subsection (c) as if it
were the Supervisory Agency and take enforcement action against the designated
financial market utility.

(f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In
the case of a designated financial market utility that is not under the primary jurisdiction of a
Supervisory Agency, the Board shall have examination and enforcement authority under
subsections (a) through (c) with respect to the designated financial market utility and any service
providers in the same manner and to the same extent as if the Board were the Supervisory
Agency.

(g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with
the Supervisory Agency, take enforcement action against a designated financial market
utility if the Board has reasonable cause to believe that—
(A) either:

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)); or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board’s use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under paragraph (1) against a designated financial market utility as if the designated financial market utility were an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board shall provide written notice to the designated financial market utility’s Supervisory Agency containing a detailed analysis of the Board’s action, with supporting documentation included.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a
financial institution engaged in designated activities in order to inform the appropriate financial
regulator of the following:

(1) the nature and scope of the designated activities engaged in by the financial
institution;

(2) the financial and operational risks the designated activities engaged in by the
financial institution may pose to the safety and soundness of the financial institution;

(3) the financial and operational risks the designated activities engaged in by the
financial institution may pose to other financial institutions, critical markets, or the
broader financial system;

(4) the resources available to and the capabilities of the financial institution to
monitor and control the risks described in paragraphs (2) and (3); and

(5) the financial institution’s compliance with this title and the rules and orders
prescribed by the Board under this title.

(b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it
deems necessary to ensure that a financial institution engaged in designated activities complies
with this title and the rules and orders prescribed by the Board under this title.

(c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical
assistance as may be required by the appropriate financial regulators to ensure that the Board’s
rules and orders prescribed under this title are interpreted and applied in as consistent and
uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD.—The appropriate financial regulator may request
the Board to conduct or participate in an examination of a financial institution engaged in designated activities in order to assess the financial institution’s compliance with this title or the Board’s rules or orders prescribed under this title.

(B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written request, the Board will conduct the examination under such terms and conditions to which the Board and the appropriate financial regulator mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD.—The appropriate financial regulator may request the Board to enforce this title or the rules or orders prescribed by the Board under this title against a financial institution engaged in designated activities.

(B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written request, the Board shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board under this title utilizing the authorities referenced in section 807(c), in which case the financial institution will be treated as if it is an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

(e) BACK-UP AUTHORITY OF THE BOARD.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board may—

(A) conduct an examination of any financial institution engaged in a designated activity; and
(B) enforce the provisions of this title or any rules or orders prescribed by
the Board under this title against any financial institution engaged in a designated
activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board may exercise the authority described in
paragraph (1)(A) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in
compliance with this title or the rules or orders prescribed by the Board
under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator of its
belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a
prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate
in an examination of the financial institution by the appropriate
financial regulator within 30 days after the date of the Board’s
notification under clause (ii); or

(II) reasonable cause to believe that the financial
institution’s noncompliance with this title or the rules or orders
prescribed by the Board under this title poses a substantial risk to
other financial institutions, critical markets, or the broader
financial system, subject to the Board affording the appropriate
financial regulator a reasonable opportunity to participate in the
examination.

(B) ENFORCEMENT.—The Board may exercise the authority described in
paragraph (1)(B) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in
compliance with this title or the rules or orders prescribed by the Board
under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator of its
belief under clause (i) with supporting documentation included and with a
recommendation that the appropriate financial regulator take one or more
specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the appropriate financial
regulator of the commencement of an enforcement action
recommended by the Board against the financial institution within
30 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial
institution’s noncompliance with this title or the rules or orders
prescribed by the Board under this title poses a substantial risk to
other financial institutions, critical markets, or the broader
financial system, subject to the Board notifying the appropriate
financial regulator of the Board’s enforcement action.

(3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated
activities shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as if the financial institution were an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any financial market utility to submit such information as the Board may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Board has reasonable cause to believe that the financial market utility meets the standards for systemic importance set out in section 804 of this title.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Board is authorized to require any financial institution to submit such information as the Board may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Board has reasonable cause to believe that the activity meets the standards for systemic importance set out in section 804 of this title.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a designated financial market utility to submit reports or data to the Board in such frequency and form as deemed necessary by the Board in order to assess the safety and soundness of the utility and the systemic risk that the utility’s operations pose to the
financial system.

(2) Financial Institutions Engaged in Designated Activities—The Board may require 1 or more financial institutions engaged in a designated activity to submit, in such frequency and form as deemed necessary by the Board, reports and data to the Board solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board under this title with respect to the designated activity.

(c) Coordination With Appropriate Federal Supervisory Agency.—

(1) Advance Coordination.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board.

(2) Supervisory Reports.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board are authorized to disclose to each other a copy of any examination report or similar report regarding any
financial market utility or any financial institution engaged in payment, clearing, or
settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the
information, report, records, or data requested by the Board under subsection (c)(1) are not
provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15
days after the date on which the material is requested, the Board may request the information or
impose recordkeeping or reporting requirements directly on such persons as provided in
subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the
Board, the appropriate financial regulator, and any Supervisory Agency are authorized to
promptly notify each other of material concerns about a designated financial market
utility or any financial institution engaged in designated activities, and share appropriate
reports, information or data relating to such concerns.

(2) OTHER.—Notwithstanding any other provision of law, the Board may, under
such terms and conditions it deems appropriate, provide confidential supervisory
information and other information obtained under this title to other persons it deems
appropriate, including the Secretary, State financial institution supervisory agencies,
foreign financial supervisors, foreign central banks, and foreign finance ministries,
subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any
Supervisory Agency providing reports or data under this section shall not be deemed to have
waived any privilege applicable to those reports or data, or any portion thereof, by providing the
reports or data to the other party or by permitting the reports or data, or any copies thereof, to be
used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and
any materials prepared by the Board regarding its assessment of the systemic importance of
financial market utilities or any payment, clearing, or settlement activities engaged in by
financial institutions, and in connection with its supervision of designated financial market
utilities and designated activities, shall be confidential supervisory information exempt from
disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title
5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

SEC. 810. RULEMAKING.

The Board is authorized to prescribe such rules and issue such orders as may be
necessary to administer and carry out the purposes of this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate financial
regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived
from any other applicable law.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment.
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 A—Disclosure

SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 38. INVESTOR ADVISORY COMMITTEE.

“(a) ESTABLISHMENT AND PURPOSE.—There is established an Investor Advisory Committee to advise and consult with the Commission on—

“(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

“(2) initiatives to protect investor interest; and

“(3) initiatives to promote investor confidence in the integrity of the market place.

“(b) MEMBERSHIP.—

“(1) APPOINTMENT.—The Chairman of the Commission shall appoint the members of the Investor Advisory Committee, which members shall—

“(A) represent the interests of individual investors;

“(B) represent the interests of institutional investors; and

“(C) use a wide range of investment and approaches.

“(2) MEMBERS NOT COMMISSION EMPLOYEES.—Members shall not be deemed
employees or agents of the Commission solely because of membership on the Investor
Advisory Commission.

“(c) MEETINGS.—The Investor Advisory Committee shall meet from time to time at the
call of the Commission, but, at a minimum, shall meet at least twice in each year.

“(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Investor Advisory
Committee who are not full-time employees of the United States shall—

“(1) be entitled to receive compensation at a rate fixed by the Commission while
attending meetings of the Investor Advisory Committee, including travel time; and

“(2) be allowed travel expenses, including transportation and subsistence, while
away from their homes or regular places of business.

“(e) COMMITTEE FINDINGS.—Nothing in this section requires the Commission to accept,
agree, or act upon the findings or recommendations of the Investor Advisory Committee.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the
Commission such sums as are necessary to cover the costs of the Investor Advisory
Committee.”.

SEC. 912. CLARIFICATION OF THE COMMISSION’S AUTHORITY TO ENGAGE IN
CONSUMER TESTING.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933
(15 U.S.C. 77s) is amended by adding at the end the following new subsection:

“(e) For the purposes of evaluating its rules and programs and for considering, proposing,
adopting, or engaging in rules or programs, the Commission is authorized to gather information,
communicate with investors or other members of the public, and engage in such temporary or
experimental programs as it in its discretion determines is in the public interest or for the

2
protection of investors. The Commission may delegate to its staff some or all of the authority
conferred by this subsection.”.

(b) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 23 of the Securities
Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding the following new subsection (b)
after subsection (a) and redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e):
“(c) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs
and for considering proposing, adopting, or engaging in rules or programs, the Commission is
authorized to gather information, communicate with investors or other members of the public,
and engage in such temporary or experimental programs as it in its discretion determines is in the
public interest or for the protection of investors. The Commission may delegate to its staff some
or all of the authority conferred by this subsection.”.

(d) AMENDMENT TO INVESTMENT COMPANY ACT OF 1940.—Section 38 of the Investment
Company Act of 1940 (15 U.S.C. 80a-38) is amended by adding at the end the following new
subsection:
“(e) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs
and for considering proposing, adopting, or engaging in rules or programs, the Commission is
authorized to gather information, communicate with investors or other members of the public,
and engage in such temporary or experimental programs as it in its discretion determines is in the
public interest or for the protection of investors. The Commission may delegate to its staff some
or all of the authority conferred by this subsection.”.

(f) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the
Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended by adding at the end the
following new subsection:
“(g) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as it in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

SEC. 913. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS, AND HARMONIZATION OF THE REGULATION OF BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

“(k) STANDARDS OF CONDUCT.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission may promulgate rules to provide, in substance, that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers or clients (and such other customers or clients as the Commission may by rule provide), shall be to act solely in the interest of the customer or client without regard to the financial or other interest of the broker, dealer or investment adviser providing the advice.

“(l) OTHER MATTERS.—The Commission shall—

“(1) take steps to facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with investment professionals; and
“(2) examine and, where appropriate, promulgate rules prohibiting sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that it deems contrary to the public interest and the interests of investors.”.

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended by adding at the end the following new subsections:

“(f) STANDARDS OF CONDUCT.—Notwithstanding any other provision of this Act or the Securities Exchange Act of 1934, the Securities and Exchange Commission may promulgate rules to provide, in substance, that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers or clients (and such other customers or clients as the Commission may by rule provide), shall be to act solely in the interest of the customer or client without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

“(g) OTHER MATTERS.—The Commission shall—

“(1) take steps to facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with investment professionals, including consultation with other financial regulators on best practices for consumer disclosures, as appropriate; and

“(2) examine and, where appropriate, promulgate rules prohibiting sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that it deems contrary to the public interest and the interests of investors.”.
SEC. 914. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT COMPANY SHARES.

Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a-24) is amended by adding at the end the following new subsection:

“(h) TIMING OF DISCLOSURE.—Notwithstanding any other provision of this Act or the Securities Act of 1933, the Commission is authorized to promulgate rules designating documents or information that must precede a sale to a purchaser of securities issued by a registered investment company.”.

Subtitle B—Enforcement and Remedies

SEC. 921. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) Amendment to Securities Exchange Act of 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

“(m) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the federal securities laws or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

(b) Amendment to Investment Advisers Act of 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended by adding at the end the following new
subsection:

“(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The
Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements
that require customers or clients of any investment adviser to arbitrate any future dispute
between them arising under the federal securities laws or the rules of a self-regulatory
organization if it finds that such prohibition, imposition of conditions, or limitations are in the
public interest and for the protection of investors.”.

SEC. 922  WHISTLEBLOWER PROTECTION.

section 21E the following new section:

“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) IN GENERAL.—In any judicial or administrative action brought by the Commission
under the securities laws that results in monetary sanctions exceeding $1,000,000, the
Commission, under regulations prescribed by the Commission and subject to subsection (b), may
pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary
sanctions imposed in the action or related actions to one or more whistleblowers who voluntarily
provided original information to the Commission that led to the successful enforcement of the
action. Any amount payable under the preceding sentence shall be paid from the fund described
in subsection (f).

“(b) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—The determination of the amount
of an award, within the limit specified in subsection (a), shall be in the sole discretion of
the Commission. The Commission may take into account the significance of the
whistleblower’s information to the success of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission’s programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws, and such additional factors as the Commission may establish by rules or regulations.

“(2) DENIAL OF AWARD.—No award under subsection (a) shall be made—

“(A) to any individual who is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization;

“(B) to any individual who is convicted of a criminal violation related to the judicial or administrative action for which the individual otherwise could receive an award under this section; or

“(C) to any individual who fails to submit information to the Commission in such form as the Commission may, by rule, require.

“(c) REPRESENTATION.—

“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously. Prior to the payment of an award, a
whistleblower must disclose his or her identity and provide such other information as the Commission may require.

“(d) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

“(e) APPEALS.—Any determinations under this section, including whether, to whom, or in what amounts to make awards, shall be in the sole discretion of the Commission, and any such determinations shall be final and not subject to judicial review.

“(f) INVESTOR PROTECTION FUND.—

“(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the “Securities and Exchange Commission Investor Protection Fund” (referred to in this section as the “Fund”).

“(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for the following purposes:

“(A) paying awards to whistleblowers as provided in subsection (a); and.

“(B) funding investor education initiatives designed to help investors protect themselves against securities fraud or other violations of the securities laws, or the rules and regulations thereunder.

“(2) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund—

“(A) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund pursuant to Section 308 of the Sarbanes-
Oxley Act of 2002 or other fund or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $100,000,000;

“(B) any monetary sanction added to a disgorgement fund pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 or other fund that is not distributed to the victims for whom the disgorgement fund was established, unless the balance of the Fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $100,000,000; and

“(C) all income from investments made under paragraph (3).

“(3) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission’s judgment, required to meet the current needs of the Fund.

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

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

“(4) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Banking, Housing, and Urban Affairs of
the Senate, and the Committee on Financial Services of the House of Representatives a report on—

“(A) the Commission’s whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;

“(B) investor education initiatives described in paragraph (1)(B) that were funded by the Fund during the preceding fiscal year;

“(C) the balance of the Fund at the beginning of the preceding fiscal year;

“(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

“(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

“(G) the amount paid from the Fund during the preceding fiscal year for investor education initiatives described in paragraph (1)(B);

“(H) the balance of the Fund at the end of the preceding fiscal year; and

“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(g) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that
employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent or associated others in providing information to the Commission in accordance with subsection (a), or in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

“(B) RELIEF.—Relief under subparagraph (A) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay, with interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys’ fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

“(C) PROCEDURE.—

“(i) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

“(ii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 6 years after the date on which the violation reported in section (a) is committed, or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the whistleblower, but in no event after 10 years after
the date on which the violation is committed.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552), or otherwise, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552. Nothing herein is intended to limit the Attorney General’s ability to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

“(i) the Attorney General of the United States;

“(ii) an appropriate regulatory authority;
“(iii) a self-regulatory organization;

“(iv) State attorneys general in connection with any criminal investigation; and

“(v) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged, in accordance with the requirements in subparagraph (A).

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(h) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

“(i) DEFINITIONS.—For purposes of this section, the following terms have the following meanings:

“(1) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is based on the direct and independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source; and

“(C) is not based on allegations in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the initial source of the information that resulted in the judicial or administrative hearing, governmental report, hearing, audit, or
investigation, or the news media’s report on the allegations.

“(2) MONETARY SANCTIONS.—The term ‘monetary sanctions,’ when used with respect to any judicial or administrative action, means any monies, including but not limited to penalties, disgorgement, and interest, ordered to be paid, and any monies deposited into a disgorgement fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

“(3) RELATED ACTION.—The term ‘related action,’ when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subsection (g)(2)(B) that is based upon the same original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

“(4) WHISTLEBLOWER.—The term ‘whistleblower’ means an individual, or two or more individuals acting jointly, who submit information to the Commission as provided in this section.”.

SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Each of the following provisions is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”:


et seq.) is amended—

21F of this title” after “the Sarbanes-Oxley Act of 2002”;

(2) in section 21A(d)(1) (15 U.S.C. 78u-1(d)(1)), by

(A) striking “(subject to subsection (e))”; and

(B) inserting “and section 21F of this title” after “the Sarbanes-Oxley Act
of 2002”; and

(C) by striking section 21A(e) (15 U.S.C. 78u-1(e)) and renumbering
sections 21A(f) and (g) (15 U.S.C. 78u-1(f) and (g)) as sections 21A(e) and (f).

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR
WHISTLEBLOWER PROTECTIONS.

(a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final
regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934,
as added by this subtitle, no later than 270 days after the date of enactment of this Act.

(b) ORIGINAL INFORMATION.—Information submitted to the Commission by a
whistleblower in accordance with regulations implementing the provisions of section 21F of the
Securities Exchange Act of 1934, as added by this subtitle, shall not lose its status as original
information, as defined in section 21F(i)(1) of the Securities Exchange Act of 1934, as added by
this subtitle, solely because the whistleblower submitted such information prior to the effective
date of such regulations, provided such information was submitted after the date of enactment of
this subtitle, or related to insider trading violations for which a bounty could have been paid at
the time such information was submitted.
(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the
Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of
a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or
administrative action upon which the award is based occurred prior to the date of enactment of
this subtitle.

SEC. 925. COLLATERAL BARS.

(a) SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the
or bar such person from being associated with a broker or dealer,” and inserting “12 months, or
bar any such person from being associated with a broker, dealer, investment adviser, municipal
securities dealer, transfer agent, or nationally recognized statistical rating organization, “.

(b) SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the
or bar any such person from being associated with a municipal securities dealer, ” and inserting
“twelve months or bar any such person from being associated with a broker, dealer, investment
adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating
organization,”.

(c) SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of
months or bar any such person from being associated with the transfer agent, ” and inserting
“twelve months or bar any such person from being associated with any transfer agent, broker,
dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating
organization,”.
(d) SECTION 203 OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the
Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking “twelve months or
bar any such person from being associated with an investment adviser,” and inserting “twelve
months or bar any such person from being associated with an investment adviser, broker, dealer,
municipal securities dealer, transfer agent, or nationally recognized statistical rating
organization.”.

SEC. 926. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT
AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15
U.S.C. 77o) is amended to read as follows:

“SEC. 15. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND
ABET VIOLATIONS.

“(a) CONTROLLING PERSONS.—Every person who, by or through stock ownership,
agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding
with one or more other persons by or through stock ownership, agency, or otherwise, controls
any person liable under section 11, or 12, shall also be liable jointly and severally with and to the
same extent as such controlled person to any person to which such controlled person is liable,
unless the controlling person had no knowledge of or reasonable ground to believe in the
existence of the facts by reason of which the liability of the controlled person is alleged to exist.

“(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any
action brought by the Commission under subparagraph (b) or (d) of section 20, any person that
knowingly or recklessly provides substantial assistance to another person in violation of a
provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in
violation of such provision to the same extent as the person to whom such assistance is provided.”.

(b) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a-48) is amended to read as follows:

“SEC. 48. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS; PREVENTING COMPLIANCE WITH ACT.

“(a) CONTROLLING PERSONS.—It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this Act or any rule, regulation, or order thereunder.

“(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

“(c) PREVENTING COMPLIANCE WITH ACT.—It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this Act or any rule, regulation, or order thereunder.”.

SEC. 927. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended by inserting at the end the following new subsection:
“(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.”.
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 C—Improvements to the Regulation of
Credit Rating Agencies

SEC. 931. MANDATORY REGISTRATION OF CREDIT RATING AGENCIES.

(a) Section 15E(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(a)(1)(A)) is amended to read as follows:

“(A) IN GENERAL.—Each credit rating agency shall register as a nationally recognized statistical rating organization for the purposes of this title (in this section referred to as the ‘applicant’), and shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).”.

(b) Section 15E(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(e)) is amended by—

(1) striking paragraph (1);

(2) striking “(2)” from the existing paragraph (2); and

(3) moving the text of that paragraph to follow the caption for subsection (e).
SEC. 932. ENHANCED REGULATION OF NATIONALLY RECOGNIZED
STATISTICAL RATING ORGANIZATIONS.


(1) in subsection (c)—

(A) in the second sentence of paragraph (2), by inserting “including the
requirements of this section,” after “Notwithstanding any other provision of law,”;
and

(B) by adding at the end the following new paragraph:

“(3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS.—

“(A) IN GENERAL.—Credit ratings by, and the policies, procedures, and
methodologies employed by, each nationally recognized statistical rating
organization shall be reviewed by the Commission to ensure that—

“(i) the nationally recognized statistical rating organization has
established and documented a system of internal controls, due diligence,
and implementation of methodologies for determining credit ratings,
taking into consideration such factors as the Commission may prescribe by
rule;

“(ii) the nationally recognized statistical rating organization
adheres to such system; and

“(iii) the public disclosures of the nationally recognized statistical
rating organization required under this section about its ratings,
methodologies, and procedures are consistent with such system.

“(B) PURPOSE OF REVIEWS.—The purpose of the reviews shall be to ensure
that the nationally recognized statistical rating organization is conducting its
business in accordance with its stated practices, including those practices that are
certified as part of issuing a rating.

“(C) SCOPE OF REVIEWS.—The Commission shall conduct the reviews
required by this paragraph—

“(i) for all types of credit ratings; and

“(ii) for new credit ratings, in a timely manner.

“(D) MANNER, FREQUENCY, AND PUBLIC DISCLOSURE.—The Commission
shall conduct reviews required by this paragraph no less frequently than annually
in a manner to be determined by the Commission. A report summarizing the key
findings of the reviews shall be made available to the public in a widely
discernable format, as deemed appropriate by the Commission.

“(E) DELEGATION OF REVIEWS.—The Commission may, as it deems
necessary, delegate any review of a nationally recognized statistical rating
organization under this paragraph to the Public Company Accounting Oversight
Board.

“(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally
recognized statistical rating organization shall make available and maintain such records
and information, for such a period of time, as the Commission may prescribe, by rule, as
necessary for the Commission to conduct the reviews under this subsection.”

(2) in subsection (d)—

(A) in the heading, by inserting “Fine,” after “Censure,”;

(B) by inserting “fine,” after “censure,” each place it appears;
(C) in paragraph (4), by striking “or” at the end;
(D) in paragraph (5), by striking the period at the end and inserting “; or”;
and
(E) by adding at the end the following new paragraph:
“(6) fails to conduct sufficient surveillance to ensure that credit ratings remain
current, accurate, and reliable, as applicable.”;
(3) by amending subsection (h) to read as follows:
“(h) MANAGEMENT OF CONFLICTS OF INTEREST.—
“(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized
statistical rating organization shall establish, maintain, and enforce written policies and
procedures reasonably designed, taking into consideration the nature of the business of
the nationally recognized statistical rating organization and affiliated persons and
affiliated companies thereof, to address, manage, and disclose any conflicts of interest
that can arise from such business.
“(2) GOVERNANCE IMPROVEMENTS AT NATIONALLY RECOGNIZED STATISTICAL
RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall
establish governance procedures to manage conflicts of interest, consistent with the
protection of users of credit ratings, in accordance with rules issued by the Commission
pursuant to paragraph (3).
“(3) COMMISSION AUTHORITY.—The Commission shall issue rules to prohibit, or
require the management and disclosure of, any conflicts of interest relating to the
issuance of credit ratings by a nationally recognized statistical rating organization,
including—
“(A) conflicts of interest relating to the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

“(B) disclosure of business relationships, ownership interests, affiliations of nationally recognized statistical rating organization board members with obligors, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with the nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

“(C) disclosure of any affiliation of a nationally recognized statistical rating organization, or any person associated with the nationally recognized statistical rating organization, with any person that underwrites securities, entities, or other instruments that are the subject of a credit rating; and

“(D) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of users of credit ratings.

“(4) COMMISSION RULES.—The rules issued by the Commission under paragraph (3) shall include—

“(A) the establishment of a system of payment for each nationally recognized statistical rating organization that requires that payments are structured to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of ratings over time, as applicable, and that incentives for accurate ratings are in place;
“(B) requirements that a nationally recognized statistical rating
organization disclose any relationship or affiliation described in subparagraphs
(B) and (C) of paragraph (3);

“(C) a requirement that, in each credit rating report issued to the public, a
nationally recognized statistical rating organization disclose the type and number
of ratings it has provided to the obligor or affiliates of the obligor, including the
fees it has billed for the credit rating and aggregate amount of fees in the
preceding 2 years that it has billed to the particular obligor or its affiliates; and

“(D) any other requirement as the Commission deems necessary or
appropriate in the public interest, or for the protection of users of credit ratings.

“(5) LOOK-BACK REQUIREMENT.—

“(A) REVIEW BY NATIONALLY RECOGNIZED STATISTICAL RATING
ORGANIZATION.—In any case in which an employee of an obligor or an issuer or
underwriter of a security or money market instrument was employed by a
nationally recognized statistical rating organization and participated in any
capacity in determining credit ratings for the obligor or the securities or money
market instruments of the issuer during the 1-year period preceding the date of the
issuance of the credit rating, the nationally recognized statistical rating
organization shall—

“(i) conduct a review to determine whether any conflicts of interest
of the employee influenced the credit rating; and

“(ii) take action to revise the rating if appropriate, in accordance
with such rules as the Commission shall prescribe.
“(B) REVIEW BY COMMISSION.—The Commission shall conduct periodic
reviews of the look-back policies described in subparagraph (A) and the
implementation of the policies at each nationally recognized statistical rating
organization to ensure they are appropriately designed and implemented to most
effectively eliminate conflicts of interest in this area.

“(6) PERIODIC REVIEWS.—

“(A) REVIEWS REQUIRED.—The Commission shall conduct periodic
reviews of governance and conflict of interest procedures established under this
subsection to determine the effectiveness of such procedures.

“(B) TIMING OF REVIEWS.—The Commission shall review and make
available to the public the code of ethics and conflict of interest policy of each
nationally recognized statistical rating organization—

“(i) not less frequently than annually; and

“(ii) whenever such policies are materially modified or amended.”;

(4) by amending subsection (j) to read as follows:

“(j) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each nationally recognized statistical rating organization
shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board of the nationally recognized statistical
rating organization (or the equivalent thereof) or to the senior officer of the
nationally recognized statistical rating organization; and

“(B) shall—

7
“(i) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of compliance) may compromise the integrity of the credit rating process;

“(ii) review compliance with internal controls with respect to the procedures and methodologies for determining credit ratings, including quantitative and qualitative models used in the rating process, and assess the risk that such compliance with the internal controls (or lack of such compliance) may compromise the integrity and quality of the credit rating process;

“(iii) in consultation with the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior officer of the nationally recognized statistical rating organization, resolve any conflicts of interest that may arise;

“(C) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

“(E) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.
“(3) LIMITATIONS.—The compliance officer shall not, while serving in that

capacity—

“(A) perform credit ratings;

“(B) participate in the development of rating methodologies or models;

“(C) perform marketing or sales functions; or

“(D) participate in establishing compensation levels, other than for

employees working for the compliance officer.

“(4) OTHER DUTIES.—The compliance officer shall establish procedures for the

receipt, retention, and treatment of—

“(A) complaints regarding credit ratings, models, methodologies, and

compliance with the securities laws and the policies and procedures required

under this section; and

“(B) confidential, anonymous complaints by employees or users of credit

ratings.

“(5) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare

and sign a report on the compliance of the nationally recognized statistical rating

organization with the securities laws and its policies and procedures, including its code of

ethics and conflict of interest policies, in accordance with rules prescribed by the

Commission. Such compliance report shall accompany the financial reports of the

nationally recognized statistical rating organization that are required to be furnished to

the Commission pursuant to this section and shall include a certification that, under

penalty of law, the report is accurate and complete.”;

(5) in subsection (k)—
(A) by striking “, on a confidential basis,”;

(B) by striking “Each nationally” and inserting the following:

“(1) IN GENERAL.—Each nationally”; and

(C) by adding at the end the following new paragraph:

“(2) EXCEPTION.—The Commission may treat as confidential any item furnished
to the Commission under paragraph (1), the publication of which the Commission
determines may have a harmful effect on a nationally recognized statistical rating
organization.”;

(6) by amending subsection (p) to read as follows:

“(p) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION REGULATION.—

“(1) IN GENERAL.—The Commission shall establish an office that administers the
rules of the Commission with respect to the practices of nationally recognized statistical
rating organizations in determining ratings, for the protection of users of credit ratings
and in the public interest, and to ensure that credit ratings issued by such registrants are
accurate and not unduly influenced by conflicts of interest.

“(2) STAFFING.—The office of the Commission established under this subsection
shall be staffed sufficiently to carry out fully the requirements of this section.

“(3) RULEMAKING AUTHORITY.—The Commission shall—

“(A) establish, by rule, fines and other penalties for any nationally
recognized statistical rating organization that violates the applicable requirements
of this title; and

“(B) issue such rules as may be necessary to carry out this section with
respect to nationally recognized statistical rating organizations.”; and
(7) by adding after subsection (p) the following new subsections:

"(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

“(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each
nationally recognized statistical rating organization shall disclose publicly information on
initial ratings and subsequent changes to such ratings for the purpose of providing a
 gauge of the accuracy of ratings and allowing users of credit ratings to compare
 performance of ratings by different nationally recognized statistical rating organizations.

“(2) CONTENT.—The rules of the Commission under this subsection shall require,
at a minimum, disclosures that—

“(A) are comparable among nationally recognized statistical rating
 organizations, so that users can compare rating performance across rating
 organizations;

“(B) are clear and informative for a wide range of investor sophistication;

“(C) include performance information over a range of years and for a
 variety of classes of credit ratings, as determined by the Commission; and

“(D) are published and made freely available by the nationally recognized
 statistical rating organization, on an easily accessible portion of its website and in
 written form when requested by users.

“(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the
 protection of users of credit ratings and in the public interest, with respect to the procedures and
 methodologies, including qualitative and quantitative models, used by nationally recognized
 statistical rating organizations that require each nationally recognized statistical rating
 organization to—
“(1) ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative models, that are approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior officer of the nationally recognized statistical rating organization, and in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;

“(2) ensure that when major changes to credit rating procedures and methodologies, including to qualitative and quantitative models, are made, that the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is disclosed publicly;

“(3) notify users of credit ratings of the version of a procedure or methodology, including a qualitative or quantitative model, used with respect to a particular credit rating;

“(4) notify users of credit ratings when a change is made to a procedure or methodology, including to a qualitative or quantitative model, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in current credit ratings being subject to rating actions; and

“(5) not later than 2 years after the date of enactment of the Investor Protection Act of 2009, adopt and use rating symbols that distinguish between structured and non-
structured products, and such other rating symbols for products that the Commission
deems appropriate or necessary in the public interest and for the protection of users of
credit ratings.

“(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION

REVIEWED.—

“(1) IN GENERAL.—The Commission shall establish a form, to accompany each
rating issued by a nationally recognized statistical rating organization—

“(A) to disclose information about assumptions underlying credit rating
procedures and methodologies, the data that was relied on to determine the credit
rating and, where applicable, how the nationally recognized statistical rating
organization used servicer or remittance reports, and with what frequency, to
conduct surveillance of the credit rating; and

“(B) that can be made public and used by investors and other users to
better understand credit ratings issued in each class of credit rating issued by the
nationally recognized statistical rating organization.

“(2) FORMAT.—The Commission shall ensure that the form established under
paragraph (1)—

“(A) is designed in a user-friendly and helpful manner for users of credit
ratings to understand the information contained in the report; and

“(B) requires the nationally recognized statistical rating organization to
provide the appropriate content, as required by paragraph (4) in a manner that is
directly comparable across securities, for example, number, rating, or index, as
appropriate, and in distinct forms for structured and traditional corporate issues.
“(3) Qualitative Content—Each nationally recognized statistical rating organization shall include on the form established under this subsection, along with its ratings—

“(A) the main assumptions included in constructing procedures and methodologies, including qualitative and quantitative models and assumptions about the correlation of defaults across obligors used in rating certain structured products;

“(B) the potential shortcomings of the credit ratings, and the types of risks excluded from the credit ratings that the registrant is not commenting on, such as liquidity, market, and other risks;

“(C) information on the certainty of the rating, including information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited, including any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered;

“(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;

“(E) a description of relevant data about any obligor, issuer, security, or money market instrument that was used and relied on for the purpose of determining the credit rating;
“(F) a statement containing an overall assessment of the quality of
information available and considered in producing a rating for a security in
relation to the quality of information available to the nationally recognized
statistical rating organization in rating similar issuances; and

“(G) additional information, including conflict of interest information, as
may be required by the Commission.

“(4) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating
organization shall include on the form established under this subsection, along with its
ratings—

“(A) an explanation or measure of the potential volatility for the rating,
including any factors that might lead to a change in the rating, and the extent of
the change that might be anticipated under different conditions;

“(B) information on the content of the rating, including:

“(i) the expected default probability; and

“(ii) the loss given default;

“(C) information on the sensitivity of the rating to assumptions made by
the nationally recognized statistical rating organization; and

“(D) additional information as may be required by the Commission.

“(5) DUE DILIGENCE SERVICES.—

“(A) CERTIFICATION REQUIRED.—In any case in which third-party due
diligence services are employed by a nationally recognized statistical rating
organization or an issuer or underwriter, the firm providing the due diligence
services shall provide to the nationally recognized statistical rating organization
written certification of the due diligence, which shall be subject to review by the Commission.

“(B) FORMAT AND CONTENT.—The nationally recognized statistical rating organizations shall establish the appropriate format and content for written certifications required under subparagraph (A) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide an accurate rating.

“(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization at the time it produces a rating to disclose the certification described in subparagraph (A) to the public in a manner that may permit the public to determine the adequacy and level of due diligence services provided by a third party.”.

SEC. 933. STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended by adding at the end the following new subsections:

“(t) PROHIBITED ACTIVITIES.—Except as provided in subsection (u), beginning 180 days from the date of enactment of the Investor Protection Act of 2009, it shall be unlawful for a nationally recognized statistical rating organization, an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, to the extent determined appropriate by the Commission, that provides a rating for an issuer, underwriter, or placement agent of a security to provide to that issuer, underwriter, or placement agent, any non-rating service that preceded the retention of the
nationally recognized statistical rating organization by the issuer, underwriter, or placement
agent to provide a rating for the security in question or any assistance provided after such point
for which additional compensation is paid directly or indirectly, including:

“(1) risk management advisory services;

“(2) ancillary assistance, advice, or consulting services unrelated to any specific
credit rating issuance; and

“(3) such further activities or services as the Commission may determine as
necessary or appropriate in the public interest or for the protection of users of credit
ratings.

“(u) EXEMPTION AUTHORITY.—The Commission may, on a case by case basis, exempt
any person, issuer, underwriter, placement agent or nationally recognized statistical rating
organization from the prohibition in subsection (t), to the extent that such exemption is necessary
or appropriate in the public interest and is consistent with the protection of users of credit ratings,
and subject to review by the Commission.”.

SEC. 934. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.

The Securities and Exchange Commission shall adopt rules under authority of the
Securities Act of 1933 (15 U.S.C. 77a, et seq.) to require issuers to disclose preliminary credit
ratings received from nationally recognized statistical rating agencies on structured products and
all forms of corporate debt.

SEC. 935. REGULATIONS.

The Securities and Exchange Commission shall adopt rules and regulations, as
required by the amendments made by the Investor Protection Act of 2009, not later than 365
days after the date of enactment of this Act.
SEC. 936. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall undertake a study of—

(1) the extent to which the rulemaking of the Securities and Exchange Commission has carried out the provisions of this Act;

(2) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements; and

(3) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation.

(b) REPORT.—Not later than 30 months after the date of enactment of this the Investor Protection Act of 2009, the Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).
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 D—Executive Compensation

SEC. 941. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

(a) Amendment to Securities Exchange Act of 1934.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(i) Annual Shareholder Approval of Executive Compensation.—

“(1) Annual vote.—Any proxy or consent or authorization for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after December 15, 2009, shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission’s compensation disclosure rules (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials). The shareholder vote shall not be binding on the corporation or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy
materials related to executive compensation.

“(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

“(A) DISCLOSURE.—In any proxy or consent solicitation material for a meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after December 15, 2009, that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple tabular form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with the executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer, and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

“(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed. A vote by the shareholders shall not be binding on the corporation or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by such board, nor to create or imply any
additional fiduciary duty by such board, nor shall such vote be construed to
restrict or limit the ability of shareholders to make proposals for inclusion in such
proxy materials related to executive compensation.”.

(b) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of the enactment of
this Act, the Securities and Exchange Commission shall issue any rules and regulations required
by the amendments made by subsection (a).

SEC. 942. COMPENSATION COMMITTEE INDEPENDENCE.

The Securities Exchange Act of 1934 is amended by inserting after section 10A (15
U.S.C. 78k-1) the following new section:

“SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

“(a) COMMISSION RULES.—

“(1) IN GENERAL.—Effective not later than 270 days after the date of enactment of
the Investor Protection Act of 2009, the Commission shall, by rule, direct the national
securities exchanges and national securities associations to prohibit the listing of any
security of an issuer that is not in compliance with the requirements of any portion of
subsections (b) through (f).

“(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under
paragraph (1) shall provide for appropriate procedures for an issuer to have an
opportunity to cure any defects that would be the basis for a prohibition under paragraph
(1), before the imposition of such prohibition.

“(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories
of issuers from the requirements of subsections (b) through (f), where appropriate. In
determining appropriate exemptions, the Commission shall take into account the potential
impact on smaller reporting issuers.

“(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

“(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

“(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

“(A) accept any consulting, advisory, or other compensatory fee from the issuer, or fee from the issuer; or

“(B) be an affiliated person of the issuer or any subsidiary thereof.

“(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate.

“(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—Any compensation consultant, legal counsel, or other adviser to the compensation committee of any issuer shall meet standards for independence to be promulgated by the Commission.

“(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

“(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to
retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee’s ability or obligation to exercise its own judgment in fulfillment of its duties.

“(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Investor Protection Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission—

“(A) whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c); and

“(B) if the compensation committee of the issuer has not retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), an explanation of the basis for the compensation committee’s determination not to retain such an independent consultant.

“(3) STUDY AND REVIEW REQUIRED.—

“(A) IN GENERAL.—The Commission shall conduct a study and review of
the use of compensation consultants meeting the standards for independence

promulgated pursuant to subsection (c), and the effects of such use.

“(B) REPORT TO CONGRESS.—Not later than 2 years after the date of

enactment of the Investor Protection Act of 2009, the Commission shall submit a

report to the Congress on the results of the study and review required by this

paragraph.

“(e) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—The

compensation committee of each issuer, in its capacity as a committee of the board of directors,

shall have the authority, in its sole discretion, to retain and obtain the advice of independent legal

counsel and other advisers meeting the standards for independence promulgated pursuant to

subsection (c), and the compensation committee shall be directly responsible for the

appointment, compensation, and oversight of the work of such independent legal counsel and

other advisers. This provision shall not be construed to require the compensation committee to

implement or act consistently with the advice or recommendations of such independent legal

counsel and other advisers, and shall not otherwise affect the compensation committee’s ability

or obligation to exercise its own judgment in fulfillment of its duties.

“(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the

compensation committee, in its capacity as a committee of the board of directors, for payment of

compensation—

“(1) to any compensation consultant to the compensation committee that meets

the standards for independence promulgated pursuant to subsection (c), and

“(2) to any independent legal counsel or other adviser to the compensation

committee that meets the standards for independence promulgated pursuant to subsection
(c).".
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).

TITLE X—CONSUMER FINANCIAL PROTECTION

AGENCY ACT OF 2009

SEC. 1001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Agency Act of 2009.”

SEC. 1002. DEFINITIONS.

For the purposes of subtitles A through F of this title, the following definitions shall apply:

(1) AFFILIATE.—The term “affiliate” means any person that controls, is controlled by, or is under common control with another person.

(2) AGENCY.—The term “Agency” means the Consumer Financial Protection Agency.

(3) ALTERNATIVE CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “alternative consumer financial product or service” means a consumer financial product or service that is of the same type or class as a standard consumer financial product or service, but that contains different or additional terms, fees, or features.

(4) APPOINTED BOARD MEMBER.—The term “appointed Board member” or “appointed Board members” means a member or members of the Board appointed by the President under section 1012(a)(1).

(5) BOARD.—The term “Board” means the Board of the Agency as provided for in section 1012.

(6) BOARD OF GOVERNORS.—The term “Board of Governors” means the Board of Governors of the Federal Reserve System.
(7) CONSUMER.—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(8) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “consumer financial product or service” means any financial product or service to be used by a consumer primarily for personal, family, or household purposes.

(9) COVERED PERSON.—The term “covered person” means—

   (A) any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service; or
   (B) any person who, in connection with the provision of a consumer financial product or service, provides a material service to, or processes a transaction on behalf of, a person described in paragraph (A).

(10) CREDIT.—The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(11) CREDIT UNION.—The term “credit union” means a Federal credit union or State credit union or State-chartered credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(12) DEPOSIT.—The term “deposit” has the same meaning as in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(13) DEPOSIT-TAKING ACTIVITY.—The term “deposit-taking activity” means—

   (A) the acceptance of deposits, the provision of other services related to the acceptance of deposits, or the maintenance of deposit accounts;
   (B) the acceptance of money, the provision of other services related to the
acceptance of money, or the maintenance of members’ share accounts by a credit
union; or

(C) the receipt of money or its equivalent, as the Agency may determine
by rule or order, received or held by the covered person (or an agent for the
person) for the purpose of facilitating a payment or transferring funds or value of
funds by a consumer to a third party.

For the purposes of this title, the Agency may determine that the term “deposit-taking
activity” includes the receipt of money or its equivalent in connection with the sale or
issuance of any payment instrument or stored value product or service.

(14) DESIGNATED TRANSFER DATE.—The term “designated transfer date” has the
meaning provided in section 1062.

(15) DIRECTOR.—The term “Director” means the Director of the Agency.

(16) ENUMERATED CONSUMER LAWS.—The term “enumerated consumer laws”
means—

(A) the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et
seq.);

(B) the Community Reinvestment Act (12 U.S.C. 2901 et seq.);

(C) the Consumer Leasing Act (15 U.S.C. 1667 et seq.);

(D) the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.);

(E) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(F) the Fair Credit Billing Act (15 U.S.C. 1666-1666j);

(G) the Fair Credit Reporting Act except with respect to sections 615(e),
624, and 628 (15 U.S.C. 1681m(e), 1681s-3, 1681w);

(17) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Board of Governors, the National Bank Supervisor, the Federal Deposit Insurance Corporation, or the National Credit Union Administration; and the term “Federal banking agencies” means all of those agencies.

(18) FINANCIAL ACTIVITY.—The term “financial activity” means—

(A) deposit-taking activities;

(B) extending credit and servicing loans, including—

(i) acquiring, brokering, or servicing loans or other extensions of credit;

(ii) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real
estate and personal property and selling or servicing credit insurance or
mortgage insurance;

(C) check-guaranty services, including—

(i) authorizing a subscribing merchant to accept personal checks
tendered by the merchant’s customers in payment for goods and services;
and

(ii) purchasing from a subscribing merchant validly authorized
checks that are subsequently dishonored;

(D) collecting, analyzing, maintaining, and providing consumer report
information or other account information by covered persons, including
information relating to the credit history of consumers and providing the
information to a credit grantor who is considering a consumer application for
credit or who has extended credit to the borrower;

(E) collection of debt related to any consumer financial product or
service;

(F) providing real estate settlement services, including providing title
insurance;

(G) leasing personal or real property or acting as agent, broker, or adviser
in leasing such property if—

(i) the lease is on a non-operating basis;

(ii) the initial term of the lease is at least 90 days; and

(iii) in the case of leases involving real property, at the inception
of the initial lease, the transaction is intended to result in ownership of the
leased property to be transferred to the lessee, subject to standards
prescribed by the Agency;

(H) acting as an investment adviser to any person (not subject to
regulation by or required to register with the Commodity Futures Trading
Commission or the Securities and Exchange Commission);

(I) acting as financial adviser to any person, including—

(i) providing financial and other related advisory services;

(ii) providing educational courses, and instructional materials to
consumers on individual financial management matters; or

(iii) providing credit counseling, tax-planning or tax-preparation
services to any person;

(J) financial data processing, including providing data processing and data
transmission services, facilities (including data processing and data transmission
hardware, software, documentation, or operating personnel), databases, advice,
and access to such services, facilities, or databases by any technological means, if:

(i) the data to be processed or furnished are financial, banking, or
economic; and

(ii) the hardware provided in connection therewith is offered only
in conjunction with software designed and marketed for the processing
and transmission of financial, banking, or economic data, and where the
general purpose hardware does not constitute more than 30 percent of the
cost of any packaged offering.

(K) money transmitting;
(L) sale or issuance of stored value;
(M) acting as a money services business;
(N) acting as a custodian of money or any financial instrument; or
(O) any other activity that the Agency defines, by rule, as a financial
activity for the purposes of this title, except that the Agency shall not define
engaging in the business of insurance as a financial activity (other than with
respect to credit insurance, mortgage insurance, or title insurance, as described in
this section).

(19) **FINANCIAL PRODUCT OR SERVICE.**—The term “financial product or service”
means any product or service that, directly or indirectly, results from or is related to
engaging in 1 or more financial activities.

(20) **FOREIGN EXCHANGE.**—The term “foreign exchange” means the exchange, for
compensation, of currency of the United States or of a foreign government for currency
of another government.

(21) **INSURED DEPOSITORY INSTITUTION.**—The term “insured depository
institution” means an insured bank, as defined by section 3(h) of the Federal Deposit
Insurance Act (12 U.S.C. 1813(h)).

(22) **MONEY SERVICES BUSINESS.**—The term “money services business” means a
covered person that—

(A) receives currency, monetary value, or payment instruments for the
purpose of exchanging or transmitting the same by any means, including
transmission by wire, facsimile, electronic transfer, courier, the Internet, or
through bill payment services, or other businesses that facilitate third-party
transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(23) MONEY TRANSMITTING.—The term “money transmitting” means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

[(24) NATIONAL BANK SUPERVISOR.—The term “National Bank Supervisor” means the agency named the National Bank Supervisor established by the XXXXX Act of 2009.]

(25) PAYMENT INSTRUMENT.—The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(26) PERSON.—The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(27) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.— The term “person regulated by the Commodity Futures Trading Commission” means any futures commission merchant, commodity trading adviser, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, but only to the extent that the person acts in such capacity.

(28) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The term “person regulated by the Securities and Exchange Commission” means—
(A) a broker or dealer that is required to be registered under the Securities
Exchange Act of 1934;
(B) an investment adviser that is required to be registered under the
Investment Advisers Act of 1940; or
(C) an investment company that is required to be registered under the
Investment Company Act of 1940—
but only to the extent that the person acts in a registered capacity.

(29) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term
“provision of (or providing) a consumer financial product or service” means the
advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance
or servicing of a consumer financial product or service.

(30) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(31) STANDARD CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term
“standard consumer financial product or service” means a consumer financial product or
service containing terms, conditions, and features defined by the Agency.

(32) STATE.—The term “State” means any State, territory, or possession of the
United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth
of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin
Islands.

(33) STORED VALUE.—The term “stored value” means funds or monetary value
represented in any electronic format, whether or not specially encrypted, and stored or
capable of storage on electronic media in such a way as to be retrievable and transferred
electronically, and includes a prepaid debit card or product, or any other similar product,
TITLE VIII—PAYMENT, CLEARING AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2009”.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary to provide consistency, to promote robust risk management and safety and soundness, to reduce systemic risks, and to support the stability of the broader financial system.
(b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial
system and promote financial stability by—

(1) authorizing the Board of Governors of the Federal Reserve System to
prescribe uniform standards for the management of risks by systemically important
financial market utilities and for the conduct of systemically important payment, clearing
and settlement activities by financial institutions;

(2) providing the Board of Governors of the Federal Reserve System an enhanced
role in the supervision of risk management standards for systemically important financial
market utilities;

(3) strengthening the liquidity of systemically important financial market utilities;

and

(4) providing the Board of Governors of the Federal Reserve System an enhanced
role in the supervision of risk management standards for systemically important payment,
clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

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

(1) AFFILIATE.—The term “affiliate” means any company that controls, is
controlled by, or is under common control with another company.

(2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial
regulator” means—

(A) the Comptroller of the Currency, with respect to national banks and
any Federal branch or Federal agency of a foreign bank, until the functions of the
Comptroller of the Currency are transferred to the Director of the National Bank
Supervisor, after which time the term means the Director of the National Bank
Supervisor with respect to those entities;

(B) the Board of Directors of the Corporation, with respect to state-chartered banks insured by the Corporation (other than member banks of the Federal Reserve System) and insured State branches of foreign banks;

(C) the Director of the Office of Thrift Supervision, with respect to any savings association and any savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred to the Director of the National Bank Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities;

(D) the Board, with respect to member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq. or § 611 et seq.), and bank holding companies and their nonbank subsidiaries (except brokers, dealers, investment companies, and investment advisers registered with the Securities and Exchange Commission, and futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission);

(E) the National Credit Union Administration Board, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 et seq.).
(F) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.);

(ii) any investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); and

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et seq.);

(G) the Commodity Futures Trading Commission, with respect to futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 et seq.);

(H) the applicable State insurance authority, with respect to any financial institution engaged in providing insurance under State insurance law; and

(I) the Board, with respect to any other financial institution engaged in a designated activity.

(3) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(4) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,
clearing, or settlement activity that the Board has designated as systemically important under section 804.

(6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial market utility” means a financial market utility that the Board has designated as systemically important under section 804.

(7) FINANCIAL INSTITUTION.—The term “financial institution” means—

(A) a depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813);

(B) a branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) (12 U.S.C. § 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq. and § 611 et seq.);

(D) a credit union (as defined in section 101 of the Federal Credit Union Act) (12 U.S.C. § 1752);

(E) a broker or dealer (as defined in section 3 of the Securities Exchange Act of 1934) (15 U.S.C. § 78c);

(F) an investment company (as defined in section 3 of the Investment Company Act of 1940) (15 U.S.C. § 80a-3);

(G) an insurance company (as defined in section 2 of the Investment Company Act of 1940) (15 U.S.C. § 80a-2);

(H) an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) (15 U.S.C. § 80b-2);

(I) a futures commission merchant, commodity trading advisor, or
commodity pool operator (as defined in section 1a of the Commodity Exchange Act) (7 U.S.C. § 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment, clearing, or settlement activity” means an activity carried out by one or more financial institutions to facilitate the completion of financial transactions. Financial transactions include funds transfers, securities contracts, contracts of sale of a commodity for future delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange contracts, financial derivatives contracts, and any similar transaction that the Board determines, by rule or order, to be a financial transaction for purposes of this title. When conducted with respect to financial transactions, payment, clearing, and settlement activities may include the calculation and communication of unsettled obligations between counterparties; the netting of transactions; provision and maintenance of trade, contract, or instrument information; the management of risks and activities associated with continuing obligations; transmittal and storage of payment instructions; the movement of funds; the final settlement of obligations; and other similar functions.

(10) PERSON.—The term “person” means any corporation, company, association,
firm, partnership, society, joint stock company, or other legal entity other than a natural
person.

(11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(12) STATE.—The term “State” means any State, commonwealth, territory, or
possession of the United States, the District of Columbia, the Commonwealth of Puerto
Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or
the United States Virgin Islands.

(13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal
agency that has primary jurisdiction over a designated financial market utility under
Federal banking, securities, or commodity futures laws, including—

(A) the Securities and Exchange Commission, with respect to a designated
financial market utility that is a clearing agency registered with the Securities and
Exchange Commission;

(B) the Commodity Futures Trading Commission, with respect to a
designated financial market utility that is a derivatives clearing organization
registered with the Commodity Futures Trading Commission;

(C) the Board of Directors of the Corporation, with respect to a designated
financial market utility that is an insured State nonmember bank or an insured
branch of a foreign bank;

(D) the Comptroller of the Currency, with respect to a designated financial
market utility that is a national bank or a Federal branch (other than an insured
branch) or a Federal agency of a foreign bank, until the functions of the
Comptroller of the Currency are transferred to the Director of the National Bank
Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities; and

(E) the Director of the Office of Thrift Supervision, with respect to a designated financial market utility that is a savings association or a savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred to the Director of the National Bank Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities.

(14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) BOARD.—The Board, on a nondelegable basis, shall designate a financial market utility or a payment, clearing, or settlement activity that it determines is, or is likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Board shall take into consideration the following:

(A) the aggregate monetary value of transactions processed by the
financial market utility or carried out through the payment, clearing, or settlement activity;

(B) the relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities;

(C) the effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system;

(D) the recommendation, if any, of the Financial Services Oversight Council; and

(E) any other factors that the Board deems appropriate.

(b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Board determines that the utility or activity no longer meets the standards for systemic importance. Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or rules or orders prescribed by the Board under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) FINANCIAL MARKET UTILITY.—Before making any determination under subsection (a) or (b) with regard to a financial market utility, the Board shall consult with the Financial Services Oversight Council and the relevant Supervisory Agency.

(2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any determination under subsection (a) or (b) with regard to a payment, clearing, or
settlement activity, the Board shall consult with the Financial Services Oversight Council.

(3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b) with regard to a financial market utility or a payment, clearing, or settlement activity, the Board shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the Board’s proposed determination.

(B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the Board’s proposed determination, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request in writing an opportunity for a written or oral hearing before the Board to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Board, oral testimony or oral argument.

(4) EMERGENCY EXCEPTION.—
(A) WAIVER OR MODIFICATION BY BOARD VOTE.—The Board may waive or modify the requirements of paragraph (3) if the Board determines, by an affirmative vote of not less than 5 members or, if there are fewer than five members then serving and available, by the unanimous vote of all available members then serving, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Board shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and three business days in the case of financial institutions. The Board shall provide the notice to financial institutions by posting a notice on the Board website and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the Board shall notify the financial market utility or financial institutions of its final determination in writing, which shall include findings of fact upon which the Board’s determination is based.

(2) WHEN NO HEARING REQUESTED.—If the Board does not receive a timely request for a hearing under subsection (c)(3), the Board shall notify the financial market utility or financial institutions of its final determination in writing not later than 30 days
after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board shall, by rule or order and in consultation with the Financial Services Oversight Council, the Commodity Futures Trading Commission, and the Securities and Exchange Commission, prescribe risk management standards governing the operations of designated financial market utilities and the conduct of designated activities by financial institutions, taking into consideration relevant international standards.

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as risk management policies and procedures, margin, collateral, capital, and default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, and other areas that the Board determines are necessary to achieve the objectives and principles in subsection (b).
(d) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions engaged in designated activities shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(b) ADVANCES.—The Board may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(d) RESERVE REQUIREMENTS.—The Board may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. § 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) REFERENCE.—For purposes of paragraphs (2) and (3), all references to the
phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence
of a Supervisory Agency, the Board”.

(2) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated
financial market utility shall provide 60-days’ advance notice to its Supervisory
Agency or the Board of any proposed change to its rules, procedures, or
operations that could, as defined by the Board, materially affect the nature or level
of risks presented by the designated financial market utility.

(B) CONTENTS OF NOTICE.—The notice of a proposed change shall
describe the nature of the change and expected effects on risks to the designated
financial market utility, its participants, or the market, and how the designated
financial market utility plans to manage any identified risks.

(C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board
may require a designated financial market utility to provide any information
necessary to assess the effect the proposed change would have on the nature or
level of risks associated with the designated financial market utility's payment,
clearing, or settlement activities and the sufficiency of any proposed risk
management techniques.

(D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will
notify the designated financial market utility of any objection regarding the
proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of
the notice is received.

(E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market
utility shall not implement a change to which the Board or the Supervisory
Agency has an objection.

(F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated
financial market utility may implement a change if it has not received an
objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board receives the
notice of proposed change; or

(ii) the date the Supervisory Agency or the Board receives any
further information it requests for consideration of the notice.

(G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The
Supervisory Agency or the Board may, during the 60-day review period, extend
the review period for an additional 60 days for proposed changes that raise novel
or complex issues, subject to the Supervisory Agency or the Board providing the
designated financial market utility with prompt written notice of the extension.
Any extension under this subparagraph will extend the time periods under
subparagraphs (D) and (F).

(H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A
designated financial market utility may implement a change in less than 60 days
from the date of receipt of the notice of proposed change by the Supervisory
Agency or the Board, or the date the Supervisory Agency or the Board receives
any further information it requested, if the Supervisory Agency or the Board
notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board.

(3) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility must provide notice of any such emergency change to its Supervisory Agency or the Board, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change must describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.
MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board hereunder.

COPYING THE BOARD.—In the case of a designated financial market utility that has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

CONSULTATION WITH BOARD.—Before taking any action on or completing its review of a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least annually in order to inform itself of the following:

(1) the nature of the operations of, and the risks borne by, the designated financial market utility;

(2) the financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system;

(3) the resources and capabilities of the designated financial market utility to monitor and control such risks;

(4) the safety and soundness of the designated financial market utility; and
(5) the designated financial market utility’s compliance with this title and the rules and orders prescribed by the Board under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as if the designated financial market utility were an insured depository institution for which the Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

(d) BOARD INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board may at any time recommend to the
Supervisory Agency that it take enforcement action against a designated financial market
utility. The recommendation shall provide a detailed analysis supporting the Board’s
recommendation.

(2) CONSIDERATION.—The Supervisory Agency shall consider the Board’s
recommendation and submit a response to the Board within 30 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the
Board’s recommendation, the Board may dispute the matter by referring it to the
Financial Services Oversight Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is
unable to resolve the dispute under paragraph (3) within 30 days from the date of referral,
the Board may exercise the enforcement authority referenced in subsection (c) as if it
were the Supervisory Agency and take enforcement action against the designated
financial market utility.

(f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In
the case of a designated financial market utility that is not under the primary jurisdiction of a
Supervisory Agency, the Board shall have examination and enforcement authority under
subsections (a) through (c) with respect to the designated financial market utility and any service
providers in the same manner and to the same extent as if the Board were the Supervisory
Agency.

(g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with
the Supervisory Agency, take enforcement action against a designated financial market
utility if the Board has reasonable cause to believe that—
(A) either:

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)); or

“(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board’s use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under paragraph (1) against a designated financial market utility as if the designated financial market utility were an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board shall provide written notice to the designated financial market utility’s Supervisory Agency containing a detailed analysis of the Board’s action, with supporting documentation included.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a
financial institution engaged in designated activities in order to inform the appropriate financial regulator of the following:

(1) the nature and scope of the designated activities engaged in by the financial institution;

(2) the financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution;

(3) the financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system;

(4) the resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3); and

(5) the financial institution’s compliance with this title and the rules and orders prescribed by the Board under this title.

(b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it deems necessary to ensure that a financial institution engaged in designated activities complies with this title and the rules and orders prescribed by the Board under this title.

(c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the Board’s rules and orders prescribed under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD.—The appropriate financial regulator may request
the Board to conduct or participate in an examination of a financial institution engaged in designated activities in order to assess the financial institution’s compliance with this title or the Board’s rules or orders prescribed under this title.

(B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written request, the Board will conduct the examination under such terms and conditions to which the Board and the appropriate financial regulator mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD.—The appropriate financial regulator may request the Board to enforce this title or the rules or orders prescribed by the Board under this title against a financial institution engaged in designated activities.

(B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written request, the Board shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board under this title utilizing the authorities referenced in section 807(c), in which case the financial institution will be treated as if it is an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

(e) BACK-UP AUTHORITY OF THE BOARD.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board may—

(A) conduct an examination of any financial institution engaged in a designated activity; and
(B) enforce the provisions of this title or any rules or orders prescribed by
the Board under this title against any financial institution engaged in a designated
activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board may exercise the authority described in
paragraph (1)(A) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in
compliance with this title or the rules or orders prescribed by the Board
under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator of its
belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a
prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate
in an examination of the financial institution by the appropriate
financial regulator within 30 days after the date of the Board’s
notification under clause (ii); or

(II) reasonable cause to believe that the financial
institutions’s noncompliance with this title or the rules or orders
prescribed by the Board under this title poses a substantial risk to
other financial institutions, critical markets, or the broader
financial system, subject to the Board affording the appropriate
financial regulator a reasonable opportunity to participate in the
examination.

(B) ENFORCEMENT.—The Board may exercise the authority described in
paragraph (1)(B) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in
compliance with this title or the rules or orders prescribed by the Board
under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator of its
belief under clause (i) with supporting documentation included and with a
recommendation that the appropriate financial regulator take one or more
specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the appropriate financial
regulator of the commencement of an enforcement action
recommended by the Board against the financial institution within
30 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial
institutions noncompliance with this title or the rules or orders
prescribed by the Board under this title poses a substantial risk to
other financial institutions, critical markets, or the broader
financial system, subject to the Board notifying the appropriate
financial regulator of the Board’s enforcement action.

(3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated
activities shall be subject to the provisions of subsections (b) through (n) of section 8 of
the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the
same extent as if the financial institution were an insured depository institution for which
the Board is the appropriate Federal banking agency as defined in section 3 of the Federal

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any
financial market utility to submit such information as the Board may require for the sole
purpose of assessing whether that financial market utility is systemically important, but
only if the Board has reasonable cause to believe that the financial market utility meets
the standards for systemic importance set out in section 804 of this title.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT
ACTIVITIES.—The Board is authorized to require any financial institution to submit such
information as the Board may require for the sole purpose of assessing whether any
payment, clearing, or settlement activity engaged in or supported by a financial institution
is systemically important, but only if the Board has reasonable cause to believe that the
activity meets the standards for systemic importance set out in section 804 of this title.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a
designated financial market utility to submit reports or data to the Board in such
frequency and form as deemed necessary by the Board in order to assess the safety and
soundness of the utility and the systemic risk that the utility’s operations pose to the
financial system.

(2) FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES—The Board may require 1 or more financial institutions engaged in a designated activity to submit, in such frequency and form as deemed necessary by the Board, reports and data to the Board solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board are authorized to disclose to each other a copy of any examination report or similar report regarding any
financial market utility or any financial institution engaged in payment, clearing, or
settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the
information, report, records, or data requested by the Board under subsection (c)(1) are not
provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15
days after the date on which the material is requested, the Board may request the information or
impose recordkeeping or reporting requirements directly on such persons as provided in
subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the
Board, the appropriate financial regulator, and any Supervisory Agency are authorized to
promptly notify each other of material concerns about a designated financial market
utility or any financial institution engaged in designated activities, and share appropriate
reports, information or data relating to such concerns.

(2) OTHER.—Notwithstanding any other provision of law, the Board may, under
such terms and conditions it deems appropriate, provide confidential supervisory
information and other information obtained under this title to other persons it deems
appropriate, including the Secretary, State financial institution supervisory agencies,
foreign financial supervisors, foreign central banks, and foreign finance ministries,
subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any
Supervisory Agency providing reports or data under this section shall not be deemed to have
waived any privilege applicable to those reports or data, or any portion thereof, by providing the
(g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and any materials prepared by the Board regarding its assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

SEC. 810. RULEMAKING.

The Board is authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the purposes of this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment.
regardless of whether the amount of the funds or monetary value may be increased or
reloaded.

Subtitle A—The Consumer Financial Protection

Agency

SEC. 1011. ESTABLISHMENT OF THE AGENCY.

(a) AGENCY ESTABLISHED.—There is established the Consumer Financial Protection
Agency as an independent agency in the executive branch to regulate the provision of consumer
financial products or services under this title, the enumerated consumer laws, and the authorities
transferred under subtitles F and H.

(b) PRINCIPAL OFFICE.—The principal office of the Agency shall be located in the city of
Washington, District of Columbia, at 1 or more sites.

SEC. 1012. BOARD.

(a) COMPOSITION OF THE BOARD.—The Agency shall have a Board that is composed of 5
members as follows:

(1) 4 members of the Board who shall be appointed by the President, by and with
the advice and consent of the Senate—

(A) from among individuals who are citizens of the United States; and

(B) who have a strong competencies and experiences related to consumer
financial products or services; and

(2) the Director of the National Bank Supervisor.

(b) DIRECTOR OF THE AGENCY.—From among the appointed Board members, the
President shall designate 1 member of the Board to serve as the Director. The Director shall be
the chief executive of the Agency.

(c) TERMS OF APPOINTED BOARD MEMBERS.—

(1) IN GENERAL.—An appointed Board member, including the Director of the Agency, shall serve for a term of 5 years.

(2) REMOVAL FOR CAUSE.—The President may remove any appointed Board member for inefficiency, neglect of duty, or malfeasance in office.

(3) VACANCIES.—Any member of the Board appointed to fill a vacancy occurring before the expiration of the term to which that member’s predecessor was appointed (including the Director of the Agency) shall be appointed only for the remainder of the term.

(4) CONTINUATION OF SERVICE.—Each appointed Board member may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate.

(5) INITIAL APPOINTMENTS STAGGERED.—The appointed Board members (including the Director of the Agency) shall serve staggered terms, which initially shall be established by the President for terms of 2, 3, 4, and 5 years, respectively.

(d) COMPENSATION.—

(1) DIRECTOR.—The Director shall receive compensation at the rate prescribed for Level I of the Executive Schedule under section 5313 of title 5, United States Code.

(2) OTHER APPOINTED BOARD MEMBERS.—The 3 other appointed Board members shall each receive compensation at the rate prescribed for Level II of the Executive Schedule under section 5314 of title 5, United States Code.

SEC. 1013. EXECUTIVE AND ADMINISTRATIVE POWERS.
(a) POWERS.—The Board may exercise all executive and administrative functions of the
Agency, including to—

(1) establish rules for conducting the Agency’s general business in a manner not
inconsistent with this title;

(2) bind the Agency and enter into contracts;

(3) direct the establishment of and maintain divisions or other offices within the
Agency in order to fulfill the responsibilities of this title, the enumerated consumer laws,
and the authorities transferred under subtitles F and H, and to satisfy the requirements of
other applicable law;

(4) coordinate and oversee the operation of all administrative, enforcement, and
research activities of the Agency;

(5) adopt and use a seal;

(6) determine the character of and the necessity for the Agency’s obligations and
expenditures, and the manner in which they shall be incurred, allowed, and paid;

(7) delegate authority, at the Agency’s lawful discretion, to the Director or to a
member of the Board or to any officer or employee of the Agency to take action under
any provision of this title or under other applicable law;

(8) to implement this title and the Agency’s authorities under the enumerated
consumer laws and under subtitles F and H through rules, orders, guidance,
interpretations, statements of policy, examinations, and enforcement actions; and

(9) perform such other functions as may be authorized or required by law.

(b) TRANSACTING BUSINESS.—

(1) QUORUM.—Three members of the Board shall constitute a quorum for the
transaction of business, except that if only 3 members of the Board are serving because of
vacancies, 2 members of the Board shall constitute a quorum for the transaction of
business.

(2) VOTING.—Other than acts performed under delegated authority, the Board
shall act through a majority vote of its members assembled.

SEC. 1014. ADMINISTRATION.

(a) OFFICERS.—The Agency shall appoint the following officials:

(1) a secretary, who shall be charged with maintaining the records of the Agency
and performing such other activities as the Board directs;

(2) a general counsel, who shall be charged with overseeing the legal affairs of the
Agency and performing such other activities as the Board directs; and

(3) an inspector general, who shall have the authority and functions of an
inspector general of a designated Federal entity under the Inspector General Act of 1978
(5 U.S.C. App. 3).

(b) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Agency may fix the number of, and appoint and
direct, all employees of the Agency.

(B) EXPEDITED HIRING.—During the 2-year period beginning on the date
of enactment of this Act, the Agency may appoint, without regard to the
provisions of sections 3309 through 3318, of title 5, United States Code,
candidates directly to positions for which public notice has been given.

(2) COMPENSATION.—
(A) PAY. — The Agency shall fix, adjust, and administer the pay for all employees of the Agency without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(B) BENEFITS. — The Agency may provide additional benefits to Agency employees if the same type of benefits are then being provided by the Board of Governors or, if not then being provided, could be provided by the Board of Governors under applicable provisions of law, rule, or regulation.

(C) MINIMUM STANDARD. — The Agency shall at all times provide compensation and benefits to classes of employees that, at a minimum, are equivalent to the compensation and benefits provided by the Board of Governors for the corresponding class of employees in any fiscal year.

(c) SPECIFIC FUNCTIONAL UNITS. —

(1) RESEARCH. — The Agency shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) current and prospective developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates;

(B) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(C) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services; and

(D) consumer behavior with respect to consumer financial products or services.
(2) **COMMUNITY AFFAIRS.**—The Agency shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) **CONSUMER COMPLAINTS.**—The Agency shall establish a unit whose functions shall include—

(A) establishing a central database for collecting and tracking information on consumer complaints about consumer financial products or services and resolution of complaints; and

(B) sharing data and coordinating consumer complaints with Federal banking agencies, other Federal agencies, and State regulators.

**SEC. 1015. CONSUMER ADVISORY BOARD.**

(a) **ESTABLISHMENT REQUIRED.**—The Agency shall establish a Consumer Advisory Board to advise and consult with the Agency in the exercise of its functions under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry.

(b) **MEMBERSHIP.**—In appointing the members of the Consumer Advisory Board, the Agency shall seek to assemble experts in financial services, community development, and consumer financial products or services and seek representation of the interests of covered persons and consumers.

(c) **MEETINGS.**—The Consumer Advisory Board shall meet from time to time at the call of the Agency, but, at a minimum, shall meet at least twice in each year.
(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Agency while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1016. COORDINATION.

(a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The Agency shall coordinate with the Securities and Exchange Commission, the Commodity Futures Trading Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer and investment products and services.

(b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

(1) IN GENERAL.—The Agency shall coordinate with each agency that is a member of the Financial Literacy and Education Commission established by the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.) to assist each agency in enhancing its existing financial literacy and education initiatives to better achieve the goals in paragraph (2) and to ensure the consistency of such initiatives across Federal agencies.

(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the Agency shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

SEC. 1017. REPORTS TO CONGRESS.
(a) **REPORTS REQUIRED.**—The Agency shall prepare and submit to the President and the appropriate committees of Congress a report at the beginning of each regular session of Congress, beginning with the session following the designated transfer date.

(b) **CONTENTS.**—The reports required by subsection (a) shall include—

1. a list of the significant rules and orders adopted by the Agency, as well as other significant initiatives conducted by the Agency, during the preceding year and the Agency’s plan for rules, orders, or other initiatives to be undertaken during the upcoming period;

2. an analysis of complaints about consumer financial products or services that the Agency has received and collected in its central database on complaints during the preceding year;

3. a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Agency is a party (including adjudication proceedings conducted under subtitle E) during the preceding year; and

4. an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws.

**SEC. 1018. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of carrying out the authorities granted in this title and the enumerated consumer laws and transferred under subtitles F and H, there are appropriated to the Agency such sums as are necessary. Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds
in title 31, United States Code, and other laws.

(b) FEES AND ASSESSMENTS ON COVERED PERSONS.—

(1) RECOVERY OF EXPENDED FUNDS.—The Agency shall recover the amount of funds expended by the Agency under this title, through the collection of annual fees or assessments on covered persons.

(2) RULEMAKING.—The Agency shall prescribe regulations to govern the collection of fees and assessments. Such regulations shall specify and define the basis of fees or assessments (such as the outstanding volume of consumer credit accounts, total assets under management, or consumer financial transactions), the amount and frequency of fees or assessments, and such other factors that the Agency deems appropriate.

(3) FEES AND ASSESSMENTS AS MISCELLANEOUS RECEIPTS.—All fees and assessments collected under this title, the authorities transferred under subtitles F and H, or any enumerated consumer law shall be deposited into the Treasury as miscellaneous receipts.

(c) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Treasury of the United States a fund to be known as the “Consumer Financial Protection Agency Civil Penalty Fund” (referred to in this section as the “Fund”). If the Agency obtains a civil penalty against any person in any judicial or administrative action under this title, the authorities transferred under subtitles F and H, or any enumerated consumer law, the Agency shall deposit into the Fund the amount of the penalty collected.

(2) PAYMENT TO VICTIMS.—Amounts in the Fund shall be available to the Agency, without fiscal year limitation, for payments to the victims of activities for which
civil penalties have been imposed under this title, the authorities transferred under
subtitles F and H, or any enumerated consumer law.

SEC. 1019. EFFECTIVE DATE.

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

Subtitle B—General Powers of the Agency

SEC. 1021. MANDATE AND OBJECTIVES.

(a) MANDATE.—The Agency shall seek to promote transparency, simplicity, fairness,
accountability, and access in the market for consumer financial products or services.

(b) OBJECTIVES.—The Agency is authorized to exercise its authorities granted in this
title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes
of ensuring that—

(1) consumers have, understand, and can use the information they need to make
responsible decisions about consumer financial products or services;

(2) consumers are protected from abuse, unfairness, deception, and
discrimination;

(3) markets for consumer financial products or services operate fairly and
efficiently with ample room for sustainable growth and innovation; and

(4) traditionally underserved consumers and communities have access to financial
services.

SEC. 1022. AUTHORITIES.

(a) IN GENERAL.—The Agency is authorized to exercise its authorities granted in this
title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer,
enforce, and otherwise implement the provisions of this title, the authorities transferred in
subtitles F and H, and the enumerated consumer laws.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Agency may prescribe rules and issue orders and guidance
as may be necessary or appropriate to enable it to administer and carry out the purposes
and objectives of this title, the authorities transferred under subtitles F and H, and the
enumerated consumer laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under this title or
pursuant to the authorities transferred under subtitles F and H or the enumerated
consumer laws, the Agency shall—

(A) consider the potential benefits and costs to consumers and covered
persons, including the potential reduction of consumers' access to consumer
financial products or services, resulting from such rule; and

(B) consult with the Federal banking agencies, or other Federal agencies,
as appropriate, regarding the consistency of a proposed rule with prudential,
market, or systemic objectives administered by such agencies.

(3) EXEMPTIONS.—

(A) IN GENERAL. —The Agency, by rule or order, may conditionally or
unconditionally exempt any covered person or any consumer financial product or
service or any class of covered persons or consumer financial products or
services, from any provision of this title, any enumerated consumer law, or from
any rule thereunder, as the Agency deems necessary or appropriate to carry out
the purposes and objectives of this title taking into consideration the factors in

20
subparagraph (B).

(B) FACTORS.—In issuing an exemption by rule or order as permitted in subparagraph (A), the Agency shall as appropriate take into consideration the following—

(i) total assets of the covered person;

(ii) the volume of transactions involving consumer financial products or services in which the covered person engages;

(iii) the extent to which the covered person engages in one or more financial activities; and

(iv) existing laws or regulations which are applicable to the consumer financial product or service and the extent to which such laws or regulations provide consumers with adequate protections.

(c) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—The Agency may on a periodic basis examine, or require reports from, a covered person for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any rules prescribed by the Agency thereunder or under the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) CONTENT OF REPORTS.—The reports authorized in paragraph (1) may include such information as necessary to keep the Agency informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other law that the Agency has jurisdiction to enforce; and
(B) matters related to the provision of consumer financial products or
services including the servicing or maintenance of accounts or extensions of
credit.

(3) USE OF EXISTING REPORTS.—In general, the Agency shall, to the fullest extent
possible, use—

(A) reports that a covered person, or any affiliate thereof, has provided or
been required to provide to a Federal or State agency; and

(B) information that has been reported publicly.

(4) REPORTS FROM NONDEPOSITORY COVERED PERSONS.—The Agency may
require reports regarding financial condition from covered persons which are not subject
to the jurisdiction of a Federal banking agency or a comparable State regulator for the
purpose of assessing the ability of such person to perform its obligations to consumers.

(5) ACCESS BY THE AGENCY TO REPORTS OF OTHER REGULATORS.—

(A) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing
reasonable assurances of confidentiality, the Agency shall have access to any
report of examination or financial condition made by a Federal banking agency or
other Federal agency having supervision of a covered person, and to all revisions
made to any such report.

(B) PROVISION OF OTHER REPORTS TO AGENCY.—In addition to the reports
described in paragraph (a), a Federal banking agency may, in its discretion,
furnish to the Agency any other report or other confidential supervisory
information concerning any insured depository institution, any credit union, or
other entity examined by such agency under authority of any Federal law.
(6) ACCESS BY OTHER REGULATORS TO REPORTS OF THE AGENCY.—Upon providing reasonable assurances of confidentiality, a Federal banking agency, a State regulator, or any other Federal agency having supervision of a covered person shall have access to any report of examination made by the Agency with respect to the covered person, and to all revisions made to any such report.

(7) PRESERVATION OF AUTHORITY.—Nothing in paragraph (3) shall be construed to prevent the Agency from conducting an examination authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law other than subsection (f), to the extent that a Federal law authorizes the Agency and another Federal agency to issue regulations or guidance, conduct examinations, or require reports under that law for purposes of assuring compliance with this title, any enumerated consumer law, the laws for which authorities were transferred under subtitles F and H, and any regulations thereunder, the Agency shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to any person subject to that law.

(e) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE AGENCY TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Agency and another Federal agency to enforce that law, the Agency shall have primary authority to enforce that Federal law with respect to any person in accordance with this subsection.

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal law
described in paragraph (1) may recommend in writing to the Agency that the Agency
initiate an enforcement proceeding as the Agency is authorized by that Federal law or by
this title. The recommendation shall be accompanied by a written explanation of the
concerns giving rise to the recommendation.

(3) BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the
Agency does not, before the end of the 120-day period beginning on the date on which
the Agency receives a recommendation under paragraph (2), initiate an enforcement
proceeding, the other agency may initiate an enforcement proceeding as permitted by that
Federal law.

(f) EXCEPTIONS.—

(1) DEPARTMENT OF JUSTICE.—Nothing in this title shall affect the authorities of
the Department of Justice.

(2) PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

(A) IN GENERAL.—Nothing in this title shall be construed as altering,
amending, or affecting the authority of the Securities and Exchange Commission
to adopt rules, initiate enforcement proceedings, or take any other action with
respect to a person regulated by the Securities and Exchange Commission. The
Agency shall have no authority to exercise any power to enforce this title with
respect to a person regulated by the Securities and Exchange Commission.

(B) CONSULTATION AND COORDINATION.—Notwithstanding subparagraph
(A), the Securities and Exchange Commission shall consult and coordinate with
the Agency with respect to any rule (including any advance notice of proposed
rulemaking) regarding an investment product or service that is the same type of
product as, or that competes directly with, a consumer financial product or service
that is subject to the jurisdiction of the Agency under this title or under any other
law.

(3) PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(A) IN GENERAL.—Nothing in this title shall be construed as altering,
amending, or affecting the authority of the Commodity Futures Trading
Commission to adopt rules, initiate enforcement proceedings, or take any other
action with respect to a person regulated by the Commodity Futures Trading
Commission. The Agency shall have no authority to exercise any power to
enforce this title with respect to a person regulated by the Commodity Futures
Trading Commission.

(B) CONSULTATION AND COORDINATION.—Notwithstanding
subparagraph (A), the Commodity Futures Trading Commission shall consult and
coordinate with the Agency with respect to any rule (including any advance notice
of proposed rulemaking) regarding a product or service that is the same type of
product as, or that competes directly with, a consumer financial product or service
that is subject to the jurisdiction of the Agency under this title or under any other
law.

(g) NO AUTHORITY TO IMPOSE USURY LIMIT.—Nothing in this title shall be construed as
conferring authority on the Agency to establish a usury limit applicable to an extension of credit
offered or made by a covered person to a consumer, unless explicitly authorized by law.

SEC. 1023. COLLECTION OF INFORMATION; CONFIDENTIALITY RULES.

(a) COLLECTION OF INFORMATION.—In conducting research on the provision of
consumer financial products or services, the Agency shall have the power to gather information
from time to time regarding the organization, business conduct, and practices of covered persons.

In order to gather such information, the Agency shall have the power—

(1) to gather and compile information; and

(2) to require persons to file with the Agency, in such form and within such
reasonable period of time as the Agency may prescribe, by rule or order, annual or
special reports, or answers in writing to specific questions, furnishing information the
Agency may require; and

(3) to make public such information obtained by it under this section as is in the
public interest in reports or otherwise in the manner best suited for public information
and use.

(b) Confidentiality Rules.— The Agency shall prescribe rules regarding the
confidential treatment of information obtained from persons in connection with the exercise of
its authorities under this title and the enumerated consumer laws and the authorities transferred
under subtitles F and H.

SEC. 1024. MONITORING; ASSESSMENTS OF SIGNIFICANT RULES; REPORTS.

(a) Monitoring.—

(1) In General.—The Agency shall monitor for risks to consumers in the
provision of consumer financial products or services, including developments in markets
for such products or services.

(2) Means of Monitoring.—Such monitoring may be conducted by
examinations of covered persons, analysis of reports obtained from covered persons,
assessment of consumer complaints, surveys and interviews of covered persons and
consumers, and review of available databases.

(3) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Agency may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) consumers’ understanding of the risks of a type of consumer financial product or service;

(C) the state of the law that applies to the provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the provision of a consumer financial product or service;

(E) extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers, if any; or

(F) types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) REPORTS.—The Agency shall publish at least 1 report of significant findings of its monitoring required by paragraph (1) in each calendar year, beginning in the calendar year that is 1-year after the designated transfer date.

(b) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Agency shall conduct an assessment of each significant rule or order adopted by the Agency under this title, under the authorities transferred
under subtitles F and H or pursuant to any enumerated consumer law that addresses,
among other relevant factors, the effectiveness of the rule in meeting the purposes and
objectives of this Act and the specific goals stated by the Agency. The assessment shall
reflect available evidence and any data that the Agency reasonably may collect.

(2) REPORTS.—The Agency shall publish a report of its assessment not later than
3 years after the effective date of the rule or order, unless the Agency determines that 3
years is not sufficient time to study or review the impact of the rule, but in no event shall
the Agency publish a report thereof more than 5 years after the effective date of the rule
or order.

(3) PUBLIC COMMENTED REQUIRED.—Before publishing a report of its assessment,
the Agency shall invite public comment on recommendations for modifying, expanding,
or eliminating the newly adopted significant rule or order.

(c) INFORMATION GATHERING.—In conducting any monitoring or assessment required by
this section, the Agency may gather information through a variety of methods, including by
conducting surveys or interviews of consumers.

SEC. 1025. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE

ARBTRATION.

The Agency, by rule, may prohibit or impose conditions or limitations on the use of
agreements between a covered person and a consumer that require the consumer to arbitrate any
future dispute between the parties arising under this title or any enumerated consumer law if the
Agency finds that such prohibition, imposition of conditions, or limitations are in the public
interest and for the protection of consumers.

SEC. 1026. EFFECTIVE DATE.
Subtitle C—Specific Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Agency may take any action authorized under subtitle E to prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service.

(b) RULEMAKING REQUIRED.—The Agency may prescribe rules identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—The Agency shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service to be unlawful on the grounds that such act or practice is unfair unless the Agency has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Agency may consider established public policies as evidence to be considered with all other evidence.

(d) CONSULTATION.—In prescribing a rule under this section, the Agency shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the

This subtitle shall become effective on the designated transfer date.
consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

**SEC. 1032. DISCLOSURES AND COMMUNICATIONS.**

(a) IN GENERAL.—The Agency may prescribe rules to ensure the appropriate and effective disclosure or communication to consumers of the costs, benefits, and risks associated with any consumer financial product or service.

(b) REASONABLE DISCLOSURES AND COMMUNICATIONS.—Subject to rules prescribed by the Agency, a covered person shall, with respect to disclosures or communications regarding any consumer financial product or service, make or provide to a consumer disclosures and communications that—

(1) balance communication of the benefits of the product or service with communication of significant risks and costs;

(2) prominently disclose the significant risks and costs, in reasonable proportion to the disclosure of the benefits;

(3) communicate significant risks and costs in a clear, concise, and timely manner designed to promote a consumer’s awareness and understanding of the risks and costs, as well as to use the information to make financial decisions; and

(4) comply with standards prescribed by the Agency.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Agency shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) COMBINED MORTGAGE LOAN DISCLOSURE.—Within 1 year after the designated
transfer date, the Agency shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Agency determines that any proposal issued by the Board of Governors and the Department of Housing and Urban Development carries out the same purpose.

SEC. 1033. SALES PRACTICES.

The Agency may prescribe rules and issue orders and guidance regarding the manner, settings, and circumstances for the provision of any consumer financial products or services to ensure that the risks, costs, and benefits of the products or services, both initially and over the term of the products or services, are fully and accurately represented to consumers.

SEC. 1034. PILOT DISCLOSURES.

(a) PILOT DISCLOSURES.—The Agency shall establish standards and procedures for approval of pilot disclosures to be provided or made available by a covered person to consumers in connection with the provision of a consumer financial product or service.

(b) STANDARDS.—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) TRANSPARENCY.—The procedures shall provide for public disclosure of pilots, but the Agency may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

SEC. 1035. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.
(a) AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel of the covered person;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of the ability of the covered person to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; or

(5) procedures and operations of the covered person relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) AGENCY AUTHORITY TO PRESCRIBE STANDARDS.—The Agency may prescribe rules establishing minimum standards under this section for any class of covered persons other than covered persons which are subject to the jurisdiction of a Federal banking agency or a comparable State regulator. The Agency may enforce under subtitle E compliance with standards adopted by the Agency or a State pursuant to this section for covered persons operating in that State.

(c) CONSULTATION.—In prescribing minimum standards under this section, the Agency shall consult with the State authorities, the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such State authorities or such agencies.

SEC. 1036. STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.
(a) CHARACTERISTICS OF STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.—

Subject to rules adopted by the Agency under this section, a standard consumer financial product or service is one that—

(1) is or can be readily offered by covered persons that offer or seek to offer alternative consumer financial products or services;

(2) is transparent to consumers in its terms and features;

(3) poses lower risks to consumers;

(4) facilitates comparisons with and assessment of the benefits and costs of alternative consumer financial products or services; and

(5) contains the features or terms defined by the Agency for the product or service.

(b) OFFERING STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.—

(1) IN GENERAL.—The Agency may adopt rules or issue guidance regarding the offer of a standard consumer financial product or service at or before the time an alternative consumer financial product or service is offered to a consumer, including:

(A) warnings to consumers about the heightened risks of alternative consumer financial products or services; or

(B) providing the consumer a meaningful opportunity to decline to obtain the standard consumer financial product or service.

(2) RULEMAKING REGARDING THE OFFERING OF STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.—The Agency may not require a covered person to offer a standard consumer financial product or service at or before the time an alternative consumer financial product or service is offered to a consumer unless the Agency adopts
rules, after notice and comment, regarding the features or terms of the product or service.

(3) GENERAL APPLICABILITY.—Rules adopted by the Agency under this section shall apply only to any covered person who —

(A) voluntarily offers or provides a consumer financial product or service that is of the same type, or in the same class, as a standard consumer financial product or service; or

(B) maintains an account or has a relationship with a consumer involving a product or service that is substantively similar to the standard product or service.

SEC. 1037. DUTIES.

(a) IN GENERAL.—

(1) The Agency shall prescribe rules imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the Agency deems appropriate or necessary to ensure fair dealing with consumers.

(2) CONSIDERATIONS FOR DUTIES.—In prescribing such rules, the Agency shall consider whether—

(A) the covered person, employee, agent, or independent contractor represents implicitly or explicitly that it is acting in the interest of the consumer with respect to any aspect of the transaction;

(B) the covered person, employee, agent, or independent contractor provides the consumer with advice with respect to any aspect of the transaction;
(C) the consumer’s reliance on any advice from the covered person, employee, agent, or independent contractor would be reasonable and justifiable under the circumstances;

(D) the benefits to consumers of imposing a particular duty would outweigh the costs; and

(E) any other factors as the Agency considers appropriate.

(3) DUTIES RELATING TO COMPENSATION PRACTICES.—The Agency may prescribe rules establishing duties regarding compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers. The Agency shall not prescribe a limit on the total dollar amount of compensation paid to any person.

(b) ADMINISTRATIVE PROCEEDINGS.—Any rule prescribed by the Agency under this section shall be enforceable only by the Agency through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding as permitted under State law. No action may be commenced in any court to enforce any requirement of a rule prescribed under this section, and no court may exercise supplemental jurisdiction over a claim asserted under a rule prescribed under this section based on allegations or evidence of conduct that otherwise may be subject to such rule. The Agency, the Attorney General, or any State attorney general or State regulator shall not be precluded from enforcing any other Federal or State law against a person with respect to conduct that may be subject to a rule prescribed by the Agency under this section.

(c) EXCLUSIONS.—This section shall not authorize the Agency to prescribe rules
applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

SEC. 1038. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to rules prescribed by the Agency, a covered person shall make available to a consumer information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) EXCEPTIONS.—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law; or
(4) any information that the covered person cannot retrieve in the ordinary course
of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to
impose any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Agency, by rule, shall prescribe standards
applicable to covered persons to promote the development and use of standardized formats for
information, including through the use of machine readable files, to be made available to
consumers under this section.

(e) CONSULTATION AND COORDINATION.—The Agency shall, when prescribing any rule
under this section, consult and coordinate with the Federal banking agencies and the Federal
Trade Commission to ensure that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in
the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to
develop systems for compliance.

SEC. 1039. PROHIBITED ACTS.

It shall be unlawful for any person to—

(1) advertise, market, offer, sell, enforce, or attempt to enforce, any term,
agreement, change in terms, fee or charge in connection with a consumer financial
product or service that is not in conformity with this title or applicable rule or order
issued by the Agency;

(2) fail or refuse to permit access to or copying of records, or fail or refuse to
TITLE VIII—PAYMENT, CLEARING AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2009”.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary to provide consistency, to promote robust risk management and safety and soundness, to reduce systemic risks, and to support the stability of the broader financial system.
(b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors of the Federal Reserve System to prescribe uniform standards for the management of risks by systemically important financial market utilities and for the conduct of systemically important payment, clearing and settlement activities by financial institutions;

(2) providing the Board of Governors of the Federal Reserve System an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities;

and

(4) providing the Board of Governors of the Federal Reserve System an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

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

(1) AFFILIATE.—The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

(2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial regulator” means—

(A) the Comptroller of the Currency, with respect to national banks and any Federal branch or Federal agency of a foreign bank, until the functions of the Comptroller of the Currency are transferred to the Director of the National Bank
Supervisor, after which time the term means the Director of the National Bank
Supervisor with respect to those entities;

(B) the Board of Directors of the Corporation, with respect to state-chartered banks insured by the Corporation (other than member banks of the Federal Reserve System) and insured State branches of foreign banks;

(C) the Director of the Office of Thrift Supervision, with respect to any savings association and any savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred to the Director of the National Bank Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities;

(D) the Board, with respect to member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq. or § 611 et seq.), and bank holding companies and their nonbank subsidiaries (except brokers, dealers, investment companies, and investment advisers registered with the Securities and Exchange Commission, and futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission);

(E) the National Credit Union Administration Board, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 et seq.);
(F) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.);

(ii) any investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); and

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et seq.);

(G) the Commodity Futures Trading Commission, with respect to futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 et seq.);

(H) the applicable State insurance authority, with respect to any financial institution engaged in providing insurance under State insurance law; and

(I) the Board, with respect to any other financial institution engaged in a designated activity.

(3) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(4) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,
clearing, or settlement activity that the Board has designated as systemically important under section 804.

(6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial market utility” means a financial market utility that the Board has designated as systemically important under section 804.

(7) FINANCIAL INSTITUTION.—The term “financial institution” means—

(A) a depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813);

(B) a branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) (12 U.S.C. § 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq. and § 611 et seq.);

(D) a credit union (as defined in section 101 of the Federal Credit Union Act) (12 U.S.C. § 1752);

(E) a broker or dealer (as defined in section 3 of the Securities Exchange Act of 1934) (15 U.S.C. § 78c);

(F) an investment company (as defined in section 3 of the Investment Company Act of 1940) (15 U.S.C. § 80a-3);

(G) an insurance company (as defined in section 2 of the Investment Company Act of 1940) (15 U.S.C. § 80a-2);

(H) an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) (15 U.S.C. § 80b-2);

(I) a futures commission merchant, commodity trading advisor, or
commodity pool operator (as defined in section 1a of the Commodity Exchange Act) (7 U.S.C. § 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment, clearing, or settlement activity” means an activity carried out by one or more financial institutions to facilitate the completion of financial transactions. Financial transactions include funds transfers, securities contracts, contracts of sale of a commodity for future delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange contracts, financial derivatives contracts, and any similar transaction that the Board determines, by rule or order, to be a financial transaction for purposes of this title. When conducted with respect to financial transactions, payment, clearing, and settlement activities may include the calculation and communication of unsettled obligations between counterparties; the netting of transactions; provision and maintenance of trade, contract, or instrument information; the management of risks and activities associated with continuing obligations; transmittal and storage of payment instructions; the movement of funds; the final settlement of obligations; and other similar functions.

(10) PERSON.—The term “person” means any corporation, company, association,
firm, partnership, society, joint stock company, or other legal entity other than a natural person.

(11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(12) STATE.—The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, including—

(A) the Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission;

(B) the Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission;

(C) the Board of Directors of the Corporation, with respect to a designated financial market utility that is an insured State nonmember bank or an insured branch of a foreign bank;

(D) the Comptroller of the Currency, with respect to a designated financial market utility that is a national bank or a Federal branch (other than an insured branch) or a Federal agency of a foreign bank, until the functions of the Comptroller of the Currency are transferred to the Director of the National Bank
Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities; and

(E) the Director of the Office of Thrift Supervision, with respect to a designated financial market utility that is a savings association or a savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred to the Director of the National Bank Supervisor, after which time the term means the Director of the National Bank Supervisor with respect to those entities.

(14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) BOARD.—The Board, on a nondelegable basis, shall designate a financial market utility or a payment, clearing, or settlement activity that it determines is, or is likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Board shall take into consideration the following:

(A) the aggregate monetary value of transactions processed by the
financial market utility or carried out through the payment, clearing, or settlement activity;

(B) the relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities;

(C) the effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system;

(D) the recommendation, if any, of the Financial Services Oversight Council; and

(E) any other factors that the Board deems appropriate.

(b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Board determines that the utility or activity no longer meets the standards for systemic importance. Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or rules or orders prescribed by the Board under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) FINANCIAL MARKET UTILITY.—Before making any determination under subsection (a) or (b) with regard to a financial market utility, the Board shall consult with the Financial Services Oversight Council and the relevant Supervisory Agency.

(2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any determination under subsection (a) or (b) with regard to a payment, clearing, or
settlement activity, the Board shall consult with the Financial Services Oversight Council.

(3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b) with regard to a financial market utility or a payment, clearing, or settlement activity, the Board shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the Board’s proposed determination.

(B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the Board’s proposed determination, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request in writing an opportunity for a written or oral hearing before the Board to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Board, oral testimony or oral argument.

(4) EMERGENCY EXCEPTION.—
(A) Waiver or Modification by Board Vote.—The Board may waive or modify the requirements of paragraph (3) if the Board determines, by an affirmative vote of not less than 5 members or, if there are fewer than five members then serving and available, by the unanimous vote of all available members then serving, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) Notice of Waiver or Modification.—The Board shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and three business days in the case of financial institutions. The Board shall provide the notice to financial institutions by posting a notice on the Board website and by publishing a notice in the Federal Register.

(d) Notification of Final Determination.—

(1) After Hearing.—Within 60 days of any hearing under subsection (c)(3), the Board shall notify the financial market utility or financial institutions of its final determination in writing, which shall include findings of fact upon which the Board’s determination is based.

(2) When No Hearing Requested.—If the Board does not receive a timely request for a hearing under subsection (c)(3), the Board shall notify the financial market utility or financial institutions of its final determination in writing not later than 30 days
after the expiration of the date by which a financial market utility or a financial institution
could have requested a hearing. All notices to financial institutions under this subsection
shall be published in the Federal Register.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET
UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT
ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board shall, by rule or order and in
consultation with the Financial Services Oversight Council, the Commodity Futures Trading
Commission, and the Securities and Exchange Commission, prescribe risk management
standards governing the operations of designated financial market utilities and the conduct of
designated activities by financial institutions, taking into consideration relevant international
standards.

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management
standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;
(2) promote safety and soundness;
(3) reduce systemic risks; and
(4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as risk
management policies and procedures, margin, collateral, capital, and default policies and
procedures, the ability to complete timely clearing and settlement of financial transactions, and
other areas that the Board determines are necessary to achieve the objectives and principles in
subsection (b).
(d) **COMPLIANCE REQUIRED.**—Designated financial market utilities and financial institutions engaged in designated activities shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board.

**SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

(a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—The Board may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(b) **ADVANCES.**—The Board may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(c) **EARNINGS ON FEDERAL RESERVE BALANCES.**—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

(d) **RESERVE REQUIREMENTS.**—The Board may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. § 461) applicable to a designated financial market utility.

(e) **CHANGES TO RULES, PROCEDURES, OR OPERATIONS.**—

(1) **REFERENCE.**—For purposes of paragraphs (2) and (3), all references to the
phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence of a Supervisory Agency, the Board”.

(2) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide 60-days’ advance notice to its Supervisory Agency or the Board of any proposed change to its rules, procedures, or operations that could, as defined by the Board, materially affect the nature or level of risks presented by the designated financial market utility.

(B) CONTENTS OF NOTICE.—The notice of a proposed change shall describe the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market, and how the designated financial market utility plans to manage any identified risks.

(C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of
the notice is received.

(E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board or the Supervisory Agency has an objection.

(F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board receives any further information it requests for consideration of the notice.

(G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (D) and (F).

(H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board, or the date the Supervisory Agency or the Board receives any further information it requested, if the Supervisory Agency or the Board
notifies the designated financial market utility in writing that it does not object to
the proposed change and authorizes the designated financial market utility to
implement the change on an earlier date, subject to any conditions imposed by the
Supervisory Agency or the Board.

(3) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a
change that would otherwise require advance notice under this subsection if it
determines that—

(i) an emergency exists; and
(ii) immediate implementation of the change is necessary for the
designated financial market utility to continue to provide its services in a
safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial
market utility must provide notice of any such emergency change to its
Supervisory Agency or the Board, as soon as practicable, which shall be no later
than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information
required for changes requiring advance notice, the notice of an emergency change
must describe—

(i) the nature of the emergency; and
(ii) the reason the change was necessary for the designated
financial market utility to continue to provide its services in a safe and
sound manner.
(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board hereunder.

(4) COPYING THE BOARD.—In the case of a designated financial market utility that has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(5) CONSULTATION WITH BOARD.—Before taking any action on or completing its review of a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least annually in order to inform itself of the following:

(1) the nature of the operations of, and the risks borne by, the designated financial market utility;

(2) the financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system;

(3) the resources and capabilities of the designated financial market utility to monitor and control such risks;

(4) the safety and soundness of the designated financial market utility; and
(5) the designated financial market utility’s compliance with this title and the rules and orders prescribed by the Board under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as if the designated financial market utility were an insured depository institution for which the Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

(d) BOARD INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board may at any time recommend to the
Supervisory Agency that it take enforcement action against a designated financial market utility. The recommendation shall provide a detailed analysis supporting the Board’s recommendation.

(2) CONSIDERATION.—The Supervisory Agency shall consider the Board’s recommendation and submit a response to the Board within 30 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the Board’s recommendation, the Board may dispute the matter by referring it to the Financial Services Oversight Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board may exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency and take enforcement action against the designated financial market utility.

(f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In the case of a designated financial market utility that is not under the primary jurisdiction of a Supervisory Agency, the Board shall have examination and enforcement authority under subsections (a) through (c) with respect to the designated financial market utility and any service providers in the same manner and to the same extent as if the Board were the Supervisory Agency.

(g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with the Supervisory Agency, take enforcement action against a designated financial market utility if the Board has reasonable cause to believe that—
(A) either:

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)); or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board’s use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under paragraph (1) against a designated financial market utility as if the designated financial market utility were an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board shall provide written notice to the designated financial market utility’s Supervisory Agency containing a detailed analysis of the Board’s action, with supporting documentation included.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a
financial institution engaged in designated activities in order to inform the appropriate financial
regulator of the following:

(1) the nature and scope of the designated activities engaged in by the financial
institution;
(2) the financial and operational risks the designated activities engaged in by the
financial institution may pose to the safety and soundness of the financial institution;
(3) the financial and operational risks the designated activities engaged in by the
financial institution may pose to other financial institutions, critical markets, or the
broader financial system;
(4) the resources available to and the capabilities of the financial institution to
monitor and control the risks described in paragraphs (2) and (3); and
(5) the financial institution’s compliance with this title and the rules and orders
prescribed by the Board under this title.

(b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it
deems necessary to ensure that a financial institution engaged in designated activities complies
with this title and the rules and orders prescribed by the Board under this title.

(c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical
assistance as may be required by the appropriate financial regulators to ensure that the Board’s
rules and orders prescribed under this title are interpreted and applied in as consistent and
uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD.—The appropriate financial regulator may request
the Board to conduct or participate in an examination of a financial institution engaged in designated activities in order to assess the financial institution’s compliance with this title or the Board’s rules or orders prescribed under this title.

(B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written request, the Board will conduct the examination under such terms and conditions to which the Board and the appropriate financial regulator mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD.—The appropriate financial regulator may request the Board to enforce this title or the rules or orders prescribed by the Board under this title against a financial institution engaged in designated activities.

(B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written request, the Board shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board under this title utilizing the authorities referenced in section 807(c), in which case the financial institution will be treated as if it is an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

(e) BACK-UP AUTHORITY OF THE BOARD.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board may—

(A) conduct an examination of any financial institution engaged in a designated activity; and
(B) enforce the provisions of this title or any rules or orders prescribed by the Board under this title against any financial institution engaged in a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board may exercise the authority described in paragraph (1)(A) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator of its belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board’s notification under clause (ii); or

(II) reasonable cause to believe that the financial institution’s noncompliance with this title or the rules or orders prescribed by the Board under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board affording the appropriate
financial regulator a reasonable opportunity to participate in the
examination.

(B) ENFORCEMENT.—The Board may exercise the authority described in
paragraph (1)(B) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in
compliance with this title or the rules or orders prescribed by the Board
under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator of its
belief under clause (i) with supporting documentation included and with a
recommendation that the appropriate financial regulator take one or more
specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the appropriate financial
regulator of the commencement of an enforcement action
recommended by the Board against the financial institution within
30 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial
institution’s noncompliance with this title or the rules or orders
prescribed by the Board under this title poses a substantial risk to
other financial institutions, critical markets, or the broader
financial system, subject to the Board notifying the appropriate
financial regulator of the Board’s enforcement action.

(3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated
activities shall be subject to the provisions of subsections (b) through (n) of section 8 of
the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the
same extent as if the financial institution were an insured depository institution for which
the Board is the appropriate Federal banking agency as defined in section 3 of the Federal

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any
financial market utility to submit such information as the Board may require for the sole
purpose of assessing whether that financial market utility is systemically important, but
only if the Board has reasonable cause to believe that the financial market utility meets
the standards for systemic importance set out in section 804 of this title.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT
ACTIVITIES.—The Board is authorized to require any financial institution to submit such
information as the Board may require for the sole purpose of assessing whether any
payment, clearing, or settlement activity engaged in or supported by a financial institution
is systemically important, but only if the Board has reasonable cause to believe that the
activity meets the standards for systemic importance set out in section 804 of this title.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a
designated financial market utility to submit reports or data to the Board in such
frequency and form as deemed necessary by the Board in order to assess the safety and
soundness of the utility and the systemic risk that the utility’s operations pose to the
financial system.

(2) FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES—The Board may require 1 or more financial institutions engaged in a designated activity to submit, in such frequency and form as deemed necessary by the Board, reports and data to the Board solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board are authorized to disclose to each other a copy of any examination report or similar report regarding any
financial market utility or any financial institution engaged in payment, clearing, or
settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the
information, report, records, or data requested by the Board under subsection (c)(1) are not
provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15
days after the date on which the material is requested, the Board may request the information or
impose recordkeeping or reporting requirements directly on such persons as provided in
subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the
Board, the appropriate financial regulator, and any Supervisory Agency are authorized to
promptly notify each other of material concerns about a designated financial market
utility or any financial institution engaged in designated activities, and share appropriate
reports, information or data relating to such concerns.

(2) OTHER.—Notwithstanding any other provision of law, the Board may, under
such terms and conditions it deems appropriate, provide confidential supervisory
information and other information obtained under this title to other persons it deems
appropriate, including the Secretary, State financial institution supervisory agencies,
foreign financial supervisors, foreign central banks, and foreign finance ministries,
subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any
Supervisory Agency providing reports or data under this section shall not be deemed to have
waived any privilege applicable to those reports or data, or any portion thereof, by providing the
reports or data to the other party or by permitting the reports or data, or any copies thereof, to be
used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and
any materials prepared by the Board regarding its assessment of the systemic importance of
financial market utilities or any payment, clearing, or settlement activities engaged in by
financial institutions, and in connection with its supervision of designated financial market
utilities and designated activities, shall be confidential supervisory information exempt from
disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title
5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

SEC. 810. RULEMAKING.

The Board is authorized to prescribe such rules and issue such orders as may be
necessary to administer and carry out the purposes of this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate financial
regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived
from any other applicable law.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment.
establish or maintain records, or fail or refuse to make reports or provide information to
the Agency, as required by this title, an enumerated consumer law, or pursuant to the
authorities transferred by subtitles F and H, or any rule or order issued by the Agency
thereunder; or

(3) knowingly or recklessly provide substantial assistance to another person in
violation of the provisions of section 1031, or any rule or order issued under thereunder,
and any such person shall be deemed to be in violation of that section to the same extent
as the person to whom such assistance is provided.

SEC. 1040. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) This title does not annul, alter, or affect, or exempt any person subject to the
provisions of this title from complying with, the laws, regulations, orders, or
interpretations, in effect in any State, except to the extent that such statute, regulation,
order, or interpretation is inconsistent with the provisions of this title and then only to the
extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this
subsection, a State statute, regulation, order, or interpretation is not inconsistent with the
provisions of this title if the protection such statute, regulation, order, or interpretation
affords consumers is greater than the protection provided under this title, as determined
by the Agency. A determination regarding whether a State statute, regulation, order, or
interpretation is inconsistent with the provisions of this title may be made by rule, order
or guidance adopted by the Agency on its own motion or in response to a non-frivolous
petition initiated by any interested person.

(b) Relation to Other Provisions of Enumerated Consumer Laws That Relate to
State Law.—Nothing in this title, except as provided in section 1075, shall be construed to
modify, limit, or supersede the operation of any provision of an enumerated consumer law that
relates to the application of State law with respect to such Federal law.


(a) In General.—

(1) Any State attorney general may bring a civil action in the name of such State,
as parens patriae on behalf of natural persons residing in such State, in any district court
of the United States or State court having jurisdiction of the defendant, to secure
monetary or equitable relief for violation of any provisions of this title or regulations
issued thereunder.

(2) Nothing in this title shall be construed to modify, limit or supersede the
operation of any provision of an enumerated consumer law that relates to the authority of
a State attorney general or State regulator to enforce such Federal law.

(b) Consultation Required.—

(1) Before initiating any action in a court or other administrative or regulatory
proceeding against any covered person to enforce any provision of this title, including
any rule prescribed by the Agency thereunder, a State attorney general or State regulator
shall timely provide a copy of the complete complaint to be filed and written notice
describing such action or proceeding to the Agency, or the Agency’s designee. If prior
notice is not practicable, the State attorney general or State regulator shall provide a copy
of the complete complaint and the notice to the Agency immediately upon instituting the
action or proceeding. The notification required under this section shall, at a minimum,
describe:

(A) the identity of the parties;
(B) the alleged facts underlying the proceeding; and
(C) whether there may be a need to coordinate the prosecution of the
proceeding so as not to interfere with any action, including any rule making,
undertaken by the Agency or another Federal agency.

(2) In any action described in paragraph (1), the Agency may—

(A) intervene in the action as a party;
(B) upon intervening—

(i) remove the action to the appropriate United States district court,
if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment to the same extent as any other party in
the proceeding may.

(c) The Agency shall adopt rules to implement the requirements of this section and, from
time to time, provide guidance in order to further coordinate actions with the State attorneys
general and other regulators.

(d) Preservation of State Claims.—Nothing in this section shall be construed as
limiting the authority of a State attorney general or State regulator to bring an action or other
regulatory proceeding arising solely under the law of that State.

SEC. 1043. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter One of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

“(a) DEFINITIONS.—For purposes of this section, the term

“(1) ‘national bank’ includes:

“(A) any bank organized under the laws of the United States;

“(B) any affiliate of a national bank;

“(C) any subsidiary of a national bank; and

“(D) any Federal branch established in accordance with the International Banking Act of 1978.

“(2) ‘affiliate’, ‘subsidiary’, ‘includes’, and ‘including’ have the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(3) ‘State consumer law’ means any law of a State that:

“(A) accords rights to or protects the rights of its citizens in financial transactions concerning negotiation, sales, solicitation, disclosure, terms and conditions, advice, and remedies; or

“(B) prevents counterparties, successors, and assigns of financial contracts from engaging in unfair or deceptive acts and practices.

“(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—Notwithstanding any other
provision of Federal law and except as provided in subsection (c), any consumer protection
provision in State consumer laws of general application, including any law relating to unfair or
deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection
law, shall apply to any national bank.

“(c) EXCEPTIONS.—Subsection (b) shall not apply with respect to any State consumer law
if—

“(1) the State consumer law discriminates against national banks; or

“(2) the State consumer law is inconsistent with provisions of Federal law other
than this title LXII, but only to the extent of the inconsistency (as determined in
accordance with the provision of the other Federal law). For this purpose, a State
c consumer law is not inconsistent with Federal law if the protection the State consumer
law affords consumers is greater than the protection provided under Federal law as
determined by the Agency.

“(d) STATE BANKING LAWS ENACTED PURSUANT TO FEDERAL LAW.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal law and
except as provided in paragraph (2), any State consumer law that—

“(A) is applicable to State banks; and

“(B) was enacted pursuant to or in accordance with, and is not inconsistent
with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer
Credit Protection Act, and the Real Estate Settlement Procedures Act, that
explicitly or by implication, permits States to exceed or supplement the
requirements of any comparable Federal law,

shall apply to any national bank.
“(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any State law if—

“(A) the State consumer law discriminates against national banks; or

“(B) the State consumer law is inconsistent with provisions of Federal law other than this title LXII, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law). For this purpose, a State consumer law is not inconsistent with Federal law if the protection the State consumer law affords consumers is greater than the protection provided under Federal law as determined by the Agency.

“(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability, to national banks, of any State law which is not described in this section.

“(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a national bank subsequently acquires the asset or instrument that is the subject of the transaction.

“(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any national bank shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter One of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:
“5136C. State law preemption standards for national banks and subsidiaries clarified.”.

SEC. 1044. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United States (as added by section 1043 of this Act) is amended by adding at the end the following new subsections:

“(h) VISITORIAL POWERS.—

“(1) No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

“(A) to require a national bank to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

“(B) to enforce any applicable Federal or State law, as authorized by such law; or

“(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

“(2) The attorney general (or other chief law enforcement officer) of any State shall consult with the National Bank Supervisor before acting under paragraph (1).

“(i) ENFORCEMENT ACTIONS.—The ability of the National Bank Supervisor to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude private parties from enforcing rights granted under Federal or State law in the courts.”.
SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by section 1043 of this Act) is amended by inserting after subsection (i) (as added by section 1044) the following new subsection:

“(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

“(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(B) NONDEPOSITORY INSTITUTION.—The term ‘nondepository institution’ means any entity that is not a depository institution.

“(2) IN GENERAL.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.”.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.
“(a) **DEFINITION.**—For purposes of this section—

“(1) the terms ‘includes’ and ‘including’ have the same meaning as in section 3(t) of the Federal Deposit Insurance Act.

“(2) the term ‘State consumer law’ means any law of a State that:

“(A) accords rights to or protects the rights of its citizens in financial transactions concerning negotiation, sales, solicitation, disclosure, terms and conditions, advice, and remedies; or

“(B) prevents counterparties, successors, and assigns of financial contracts from engaging in unfair or deceptive acts and practices.

“(b) **STATE CONSUMER LAWS OF GENERAL APPLICATION.**— Notwithstanding any other provision of Federal law and except as provided in subsection (c), any consumer protection provision in State consumer laws of general application, including any law relating to unfair or deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection law, shall apply to any Federal savings association.

“(c) **EXCEPTIONS.**—Subsection (b) shall not apply with respect to any State law if—

“(1) the State law discriminates against Federal savings associations; or

“(2) the State consumer law is inconsistent with provisions of Federal law other than this title LXII, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law). For this purpose, a State consumer law is not inconsistent with Federal law if the protection the State consumer law affords consumers is greater than the protection provided under Federal law as determined by the Agency.

“(d) **STATE BANKING OR THRIFT LAWS ENACTED PURSUANT TO FEDERAL LAW.**—
“(1) IN GENERAL.—Notwithstanding any other provision of Federal law and except as provided in paragraph (2), any State law that—

“(A) is applicable to State savings associations (as defined in section 3 of the Federal Deposit Insurance Act); and

“(B) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable Federal law,

shall apply to any Federal savings association.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any State law if—

“(A) the State law discriminates against Federal savings associations; or

“(B) the State consumer law is inconsistent with provisions of Federal law other than this title LXII, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law). For this purpose, a State consumer law is not inconsistent with Federal law if the protection the State consumer law affords consumers is greater than the protection provided under Federal law as determined by the Agency.

“(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability, to Federal savings associations, of any State law which is not described in this section.

“(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a
transaction at the inception of the transaction may not be preempted under Federal law solely
because a Federal savings association subsequently acquires the asset or instrument that is the
subject of the transaction.

“(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of
any provision of the law of any State with respect to any Federal savings association shall not be
treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of
the United States (42 U.S.C. 1983).”.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12
U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the
following new item:

“6. State law preemption standards for Federal savings associations and
subsidiaries clarified.”.

SEC. 1047. VISITORIAL STANDARDS.

Section 6 of the Home Owners' Loan Act (as added by section 1046 of this title) is
amended by adding at the end the following new subsections:

“(h) VISITORIAL POWERS.—

“(1) No provision of this Act shall be construed as limiting or restricting the
authority of any attorney general (or other chief law enforcement officer) of any State to
bring any action in any court of appropriate jurisdiction—

“(A) to require a Federal savings association to produce records relative to
the investigation of violations of State consumer law, or Federal consumer laws;

“(B) to enforce any applicable Federal or State law, as authorized by such
law; or
“(C) on behalf of residents of such State, to enforce any applicable
provision of any Federal or State law against a Federal savings association, as
authorized by such law, or to seek relief and recover damages for such residents
from any violation of any such law by any Federal savings association.

“(2) The attorney general (or other chief law enforcement officer) of any State
shall consult with the National Bank Supervisor before acting under paragraph (1).

“(i) ENFORCEMENT ACTIONS.—The ability of the National Bank Supervisor to bring an
enforcement action under this Act or section 5 of the Federal Trade Commission Act does not
preclude private parties from enforcing rights granted under Federal or State law in the courts.”.

SEC. 1048. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY
INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners' Loan Act (as added by section 1046 of this title) is
amended by adding after subsection (i) (as added by section 1047) the following new subsection:

“(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES
AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

“(1) DEFINITIONS.—For purposes of this section, the following definitions shall
apply:

“(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms
‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in
section 3 of the Federal Deposit Insurance Act.

“(B) NONDEPOSITORY INSTITUTION.—The term ‘nondepository institution’
means any entity that is not a depository institution.

“(2) IN GENERAL.—No provision of this title shall be construed as preemption of the
applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.”.

SEC. 1049. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

For purposes of this subtitle—

(1) CIVIL INVESTIGATIVE DEMAND and DEMAND.—The terms “civil investigative demand” and “demand” mean any demand issued by the Agency.

(2) AGENCY INVESTIGATION.—The term “Agency investigation” means any inquiry conducted by an Agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any enumerated consumer law, or any rule or order promulgated by the Agency thereunder or under the authorities transferred under subtitles F and H.

(3) AGENCY INVESTIGATOR.—The term “Agency investigator” means any attorney or investigator employed by the Agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any rule or order promulgated thereunder by the Agency.

(4) CUSTODIAN.—The term “custodian” means the custodian or any deputy custodian designated by the Agency.

(5) DOCUMENTARY MATERIAL.—The term “documentary material” includes the
original or any copy of any book, record, report, memorandum, paper, communication, 
tabulation, chart, or other document.

(6) VIOLATION.—The term “violation” means any act or omission that, if proved, 
would constitute a violation of any provision of this title, any enumerated consumer law, 
any law for which authorities were transferred under subtitles F and H, or of any rule or 
order prescribed by the Agency thereunder.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) SUBPOENAS.—

(1) IN GENERAL.—The Agency or an Agency investigator may issue subpoenas 
for the attendance and testimony of witnesses and the production of relevant papers, 
books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena 
issued pursuant to this paragraph and served upon any person, the district court of the 
United States for any district in which such person is found, resides, or transacts business, 
upon application by the Agency or an Agency investigator and after notice to such 
person, shall have jurisdiction to issue an order requiring such person to appear and give 
testimony or to appear and produce documents or other material, or both.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection 
may be punished by the court as a contempt thereof.

(b) DEMANDS.—

(1) IN GENERAL.—Whenever the Agency has reason to believe that any person 
may be in possession, custody, or control of any documentary material or tangible things, 
or may have any information, relevant to a violation, the Agency may, before the
institution of any proceedings under this title or under any enumerated consumer law or
pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause
to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or
reproduction;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material or other
information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the
conduct constituting the alleged violation which is under investigation and the provision
of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the
production of documentary material shall—

(A) describe each class of documentary material to be produced under the
demand with such definiteness and certainty as to permit such material to be fairly
identified;

(B) prescribe a return date or dates which will provide a reasonable period
of time within which the material so demanded may be assembled and made
available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the
submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—
(A) Any civil investigative demand may be served by any Agency investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by
registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(9) PROOF OF SERVICE.—

(A) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have
been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—Any Agency investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness.

(i) The testimony shall be taken stenographically and transcribed.

(ii) After the testimony is fully transcribed, the Agency investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Agency investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his or her attorney, the officer before whom the testimony is to be taken, and any stenographer taking
such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a
civil investigative demand shall be taken in the judicial district of the United
States in which such person resides, is found, or transacts business, or in such
other place as may be agreed upon by the Agency investigator before whom the
oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) Any person compelled to appear under a civil investigative
demand for oral testimony pursuant to this section may be accompanied,
represented, and advised by an attorney.

(ii) The attorney may advise such person, in confidence, either
upon the request of such person or upon the initiative of the attorney, with
respect to any question asked of such person.

(iii) Such person or attorney may object on the record to any
question, in whole or in part, and shall briefly state for the record the
reason for the objection.

(iv) An objection may properly be made, received, and entered
upon the record when it is claimed that such person is entitled to refuse to
answer the question on grounds of any constitutional or other legal right or
privilege, including the privilege against self-incrimination, but such
person shall not otherwise object to or refuse to answer any question, and
shall not himself or through his attorney otherwise interrupt the oral
examination.
(v) If such person refuses to answer any question, the Agency may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(vi) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—

(i) After the testimony of any witness is fully transcribed, the Agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(ii) The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(iii) Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Agency investigator with a statement of the reasons given by the witness for making such changes.

(iv) The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(v) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Agency investigator shall sign
the transcript and state on the record the fact of the waiver, illness, absen
cess of the witness, or the refusal to sign, together with any reasons
given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The Agency investigator shall
certify on the transcript that the witness was duly sworn by him or her and that the
transcript is a true record of the testimony given by the witness, and the Agency
investigator shall promptly deliver the transcript or send it by registered or
certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Agency investigator shall furnish a copy
of the transcript (upon payment of reasonable charges for the transcript) to the
witness only, except that the Agency may for good cause limit such witness to
inspection of the official transcript of his testimony.

(H) WITNESS FEES.—Any witness appearing for the taking of oral
testimony pursuant to a civil investigative demand shall be entitled to the same
fees and mileage which are paid to witnesses in the district courts of the United
States.

(c) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Materials received as a result of a civil investigative demand
shall be subject to requirements and procedures regarding confidentiality, in accordance
with rules established by the Agency.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Agency regarding
the confidentiality of materials submitted to, or otherwise obtained by, the Agency shall
be intended to prevent disclosure to either House of Congress or to an appropriate
committee of the Congress, except that the Agency is permitted to adopt rules allowing
prior notice to any party that owns or otherwise provided the material to the Agency and
had designated such material as confidential.

(d) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil
investigative demand duly served upon him under this section, or whenever satisfactory
copying or reproduction of material requested pursuant to the demand cannot be
accomplished and such person refuses to surrender such material, the Agency, through
such officers or attorneys as it may designate, may file, in the district court of the United
States for any judicial district in which such person resides, is found, or transacts
business, and serve upon such person, a petition for an order of such court for the
enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be
made as provided in this subsection may be served in any judicial district.

(e) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil
investigative demand upon any person under subsection (b), or at any time before the
return date specified in the demand, whichever period is shorter, or within such period
exceeding 20 days after service or in excess of such return date as may be prescribed in
writing, subsequent to service, by any Agency investigator named in the demand, such
person may file with the Agency a petition for an order by the Agency modifying or
setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with
the demand in whole or in part, as deemed proper and ordered by the Agency, shall not
run during the pendency of such petition at the Agency, except that such person shall
comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the
petitioner relies in seeking such relief, and may be based upon any failure of the demand
to comply with the provisions of this section, or upon any constitutional or other legal
right or privilege of such person.

(f) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or
control of any documentary material, tangible things, reports, answers to questions, or transcripts
of oral testimony given by any person in compliance with any civil investigative demand, such
person may file, in the district court of the United States for the judicial district within which the
office of such custodian is situated, and serve upon such custodian, a petition for an order of such
court requiring the performance by such custodian of any duty imposed upon him by this section
or rule promulgated by the Agency.

(g) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the
United States under this section, such court shall have jurisdiction to hear and determine
the matter so presented, and to enter such order or orders as may be required to carry into
effect the provisions of this section.

(2) APPEAL.—Any final order so entered shall be subject to appeal pursuant to
section 1291 of title 28, United States Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Agency is authorized to conduct hearings and adjudication
proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any rules prescribed by the Agency under this title; and

(2) any other Federal law that the Agency is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—If, in the opinion of the Agency, any covered person is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Agency, the Agency may issue and serve upon the person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the person. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Agency shall find that any violation specified in the notice of charges has been established, the Agency may issue and serve upon the person an order to cease and desist from any such violation or
practice. Such order may, by provisions which may be mandatory or otherwise, require
the person to cease and desist from the same, and, further, to take affirmative action to
correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective
at the expiration of 30 days after the service of such order upon the covered person
concerned (except in the case of a cease-and-desist order issued upon consent, which
shall become effective at the time specified therein), and shall remain effective and
enforceable as provided therein, except to such extent as it is stayed, modified,
terminated, or set aside by action of the Agency or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be
held in the Federal judicial district or in the territory in which the residence or home
office of the person is located unless the person consents to another place, and shall be
conducted in accordance with the provisions of chapter 5 of title 5 of the United States
Code. After such hearing, and within 90 days after the Agency has notified the parties
that the case has been submitted to it for final decision, it shall render its decision (which
shall include findings of fact upon which its decision is predicated) and shall issue and
serve upon each party to the proceeding an order or orders consistent with the provisions
of this section. Judicial review of any such order shall be exclusively as provided in this
subsection. Unless a petition for review is timely filed in a court of appeals of the United
States, as hereinafter provided in paragraph (4), and thereafter until the record in the
proceeding has been filed as so provided, the Agency may at any time, upon such notice
and in such manner as it shall deem proper, modify, terminate, or set aside any such
order. Upon such filing of the record, the Agency may modify, terminate, or set aside
any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Agency, and thereupon the Agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Agency determines that the violation specified
in the notice of charges served upon a person pursuant to subsection (b), or the
continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice
the interests of consumers before the completion of the proceedings conducted pursuant
to subsection (b), the Agency may issue a temporary order requiring the covered person
to cease and desist from any such violation or practice and to take affirmative action to
prevent or remedy such insolvency or other condition pending completion of such
proceedings. Such order may include any requirement authorized under this subtitle.
Such order shall become effective upon service upon the person and, unless set aside,
limited, or suspended by a court in proceedings authorized by paragraph (2) of this
subsection, shall remain effective and enforceable pending the completion of the
administrative proceedings pursuant to such notice and until such time as the Agency
shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued
against the person, until the effective date of such order.

(2) APPEAL.—Within 10 days after the person concerned has been served with a
temporary cease-and-desist order, the person may apply to the United States district court
for the judicial district in which the home office of the covered person is located, or the
United States District Court for the District of Columbia, for an injunction setting aside,
limiting, or suspending the enforcement, operation, or effectiveness of such order
pending the completion of the administrative proceedings pursuant to the notice of
charges served upon the person under subsection (b), and such court shall have
jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection

(b) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the Agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—
(1) IN GENERAL.—The Agency may in its discretion apply to the United States
district court within the jurisdiction of which the principal office of the covered person is
located, for the enforcement of any effective and outstanding notice or order issued under
this section, and such court shall have jurisdiction and power to order and require
compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall
have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any
notice or order or to review, modify, suspend, terminate, or set aside any such notice or
order.

(e) RULES.—The Agency shall prescribe rules establishing such procedures as may be
necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a provision of this title, any enumerated
consumer law, any law for which authorities were transferred under subtitles F and H, or any rule
or order prescribed by the Agency thereunder, then the Agency may commence a civil action
against such person to impose a civil penalty or to seek all appropriate legal or equitable relief
including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Agency may act in its own name and through its own
attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation,
or in any action, suit, or proceeding to which the Agency is a party.

(c) COMPROMISE OF ACTIONS.—The Agency may compromise or settle any action if such
compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this
title, any enumerated consumer law, any law for which authorities were transferred under
subtitles F and H, or any rule thereunder, the Agency shall notify the Attorney General.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Agency may represent itself in its
own name before the Supreme Court of the United States, provided that the Agency makes a
written request to the Attorney General within the 10-day period which begins on the date of
entry of the judgment which would permit any party to file a petition for writ of certiorari, and
the Attorney General concurs with such request or fails to take action within 60 days of the
Agency’s request.

(f) FORUM.—Any civil action brought under this title may be brought in a United States
district court or in any court of competent jurisdiction of a state in a district in which the
defendant is located or resides or is doing business, and such court shall have jurisdiction to
enjoin such person and to require compliance with this title, any enumerated consumer law, any
law for which authorities were transferred under subtitles F and H, or rule or order of the Agency
thereunder.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law, no action may be
brought under this title more than 3 years after the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) For purposes of this section, an action arising under this title shall not
include claims arising solely under enumerated consumer laws.

(B) In any action arising solely under an enumerated consumer law, the
Agency may commence, defend, or intervene in the action in accordance with the
requirements of that law, as applicable.
(C) In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or Agency, as the case may be) in an action or adjudication proceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H, including a violation of a rule or order prescribed under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

(2) RELIEF.—Such relief may include and without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) compensation for unjust enrichment;

(E) payment of damages;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (d).
(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Agency to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any rule or order prescribed by the Agency thereunder, the Agency may recover its costs in connection with prosecuting such action if the Agency is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) Any person that violates any provision of this title, any enumerated consumer law, or any rule or order prescribed under this title shall forfeit and pay a civil penalty pursuant to this subsection.

(A) FIRST TIER.—For any violation of a final order or condition imposed in writing by the Agency, a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any violation of a rule prescribed under section 1036 or for any person that recklessly engages in a violation of this title, any enumerated consumer law, or any rule or order prescribed under this title, relating to the provision of an alternative consumer financial product or service, a civil penalty shall not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates this title, any enumerated consumer law, or a rule or order prescribed under this title, a civil penalty shall not exceed $1,000,000 for
each day during which such violation continues.

(2) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (1), the Agency or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(3) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (1). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(4) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any enumerated consumer law, or any rule or order prescribed by the Agency, unless—

(A) the Agency gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Agency.
SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

Whenever the Agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Agency shall have the power to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Agency to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No person shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to the Agency, filed, instituted or caused to be filed or instituted any proceeding under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title.

(b) AGENCY REVIEW OF TERMINATION.—Any employee or representative of employees who believes that he has been terminated or otherwise discriminated against by any person in violation of subsection (a) may, within 45 days after such alleged violation occurs, apply to the Agency for review of such termination or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Agency shall cause such investigation to be made as the Agency deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the
hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Agency shall make findings of fact. If the Agency finds that there is sufficient evidence in the record to conclude that such a violation did occur, the Agency shall issue a decision, incorporating an order therein and the Agency’s findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Agency deems appropriate, including reinstating or rehiring the employee or representative of employees to the former position with compensation. If the Agency finds insufficient evidence to support the allegations made in the application, the Agency shall deny the application. An order issued by the Agency under this subsection (b) shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this title or any enumerated consumer law.

(c) COSTS AND EXPENSES.—Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorney’s fees) determined by the Agency to have been reasonably incurred by the applicant for, or in connection with, the application and prosecution of such proceedings shall be assessed against the person committing such violation.

(d) EXCEPTION.—This section shall not apply to any employee who acting without discretion from his or her employer (or the employer’s agent) deliberately violates any requirement of this title or any enumerated consumer law.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

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
duties that were vested in the Director of the Office of Thrift Supervision, relating
to consumer financial protection functions, on the day before the designated
transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection
functions of the Federal Deposit Insurance Corporation are transferred to the
Agency.

(B) CORPORATION’S AUTHORITY.—The Agency shall have all powers and
duties that were vested in the Federal Deposit Insurance Corporation, relating to
consumer financial protection functions, on the day before the designated transfer
date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection
functions of the Federal Trade Commission are transferred to the Agency.

(B) COMMISSION’S AUTHORITY.—The Agency shall have all powers and
duties that were vested in the Federal Trade Commission, relating to consumer
financial protection functions, on the day before the designated transfer date.

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection
functions of the National Credit Union Administration are transferred to the
Agency.

(B) NATIONAL CREDIT UNION ADMINISTRATION’S AUTHORITY.—The
Agency shall have all powers and duties that were vested in the National Credit
Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(b) Transfers of Functions Subject to Backstop Enforcement Authority

Remaining with Transferor Agencies.—The transfers of functions in subsection (a) shall not affect the authority of the agencies identified in subsection (a) from initiating enforcement proceedings under the circumstances described in section 1022(e)(3).

(c) Termination of Authority of Transferor Agencies to Collect Fees for Consumer Financial Protection Purposes.—Authorities of the agencies identified in subsection (a) to assess and collect fees to cover the cost of conducting consumer financial protection functions shall terminate on the day before the designated transfer date.

(d) “Consumer Financial Protection Functions” Defined—For purposes of this subtitle, the term “consumer financial protection functions” means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services, including the authority to assess and collect fees for those purposes.

(e) Effective Date.—Subsections (a) and (b) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) In General.—Not later than 60 days after the date of enactment of this Act, the Secretary—

(1) shall, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board,
the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the
Director of the Office of Management and Budget, designate a single calendar date for
the transfer of functions to the Agency under section 1061; and

(2) shall publish notice of that designation in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the
Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal
Trade Commission, the Chairman of the National Credit Union Administration Board,
the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the
Director of the Office of Management and Budget, change the date designated under
subsection (a); and

(2) shall publish notice of any changed designation in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under
this section shall be not earlier than 180 days nor later than 18 months after the date of
enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18
months after the date of enactment of this Act if the Secretary transmits to appropriate
committees of Congress—

(A) a written determination that orderly implementation of this title is not
feasible on the date that is 18 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly
implementation of this title; and
(C) a description of the steps that will be taken to effect an orderly and

timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case shall any date designated under this section

be later than 24 months after the date of enactment of this Act.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section

1061(a)(1) shall not affect the validity of any right, duty, or obligation of the United

States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial

protection function of the Board of Governors transferred to the Agency by this

title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding

commenced by or against the Board of Governors (or any Federal reserve bank) before

the designated transfer date with respect to any consumer financial protection function of

the Board of Governors (or any Federal reserve bank) transferred to the Agency by this

title, except that the Agency shall be substituted for the Board of Governors (or Federal

reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section

1061(a)(4) shall not affect the validity of any right, duty, or obligation of the United

States, the Federal Deposit Insurance Corporation, the Board of Directors of that
Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Agency by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Agency by this title, except that the Agency shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(a)(5) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Agency by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade
Commission transferred to the Agency by this title, except that the Agency shall be
substituted for the Federal Trade Commission as a party to any such proceeding as of the
designated transfer date.

(d) National Credit Union Administration.—

(1) Existing rights, duties, and obligations not affected.—Section
1061(a)(6) shall not affect the validity of any right, duty, or obligation of the United
States, the National Credit Union Administration, the National Credit Union
Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial
protection function of the National Credit Union Administration transferred to the
Agency by this title; and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits.—This Act shall not abate any proceeding
commenced by or against the National Credit Union Administration (or the National
Credit Union Administration Board) before the designated transfer date with respect to
any consumer financial protection function of the National Credit Union Administration
transferred to the Agency by this title, except that the Agency shall be substituted for the
National Credit Union Administration (or National Credit Union Administration Board)
as a party to any such proceeding as of the designated transfer date.

(e) Office of the Comptroller of the Currency.—

(1) Existing rights, duties, and obligations not affected.—Section
1061(a)(2) shall not affect the validity of any right, duty, or obligation of the United
States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or
any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Agency by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Agency by this title before the designated transfer date, except that the Agency shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(a)(3) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Agency by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office
of Thrift Supervision) with respect to any consumer financial protection function of the
Director of the Office of Thrift Supervision transferred to the Agency by this title before
the designated transfer date, except that the Agency shall be substituted for the Director
(or the Office of Thrift Supervision) as a party to any such proceeding as of the
designated transfer date.

(g) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND
RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been
issued, made, prescribed, or allowed to become effective by the Board of Governors (or any
Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade
Commission, the National Credit Union Administration, the Office of the Comptroller of the
Currency, or the Office of Thrift Supervision, or by a court of competent jurisdiction, in the
performance of consumer financial protection functions that are transferred by this title and that
are in effect on the day before the designated transfer date, shall continue in effect according to
the terms of those orders, resolutions, determinations, agreements, and rules, and shall be
enforceable by or against the Agency until modified, terminated, set aside, or superseded in
accordance with applicable law by the Agency, by any court of competent jurisdiction, or by
operation of law.

(h) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date,
the Agency—

(1) shall, after consultation with the Chairman of the Board of Governors, the
Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal
Trade Commission, the Chairman of the National Credit Union Administration Board,
the Comptroller of the Currency, and the Director of the Office of Thrift Supervision,
identify the rules continued under subsection (g) that will be enforced by the Agency; and

(2) shall publish a list of such rules in the Federal Register.

(i) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision, which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date but has not published as a final rule before that date, shall be deemed to be a proposed rule of the Agency.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision, which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date but which has not become effective before that date, shall become effective as a rule of the Agency according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Agency and the Board of Governors shall—

(i) jointly determine the number of employees of the Board
necessary to perform or support the consumer financial protection 
functions of the Board of Governors that are transferred to the Agency by 
this title; and 

(ii) consistent with the number determined under clause (i), jointly 
identify employees of the Board of Governors for transfer to the Agency 
in a manner that the Agency and the Board of Governors, in their sole 
discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board 
of Governors identified under subparagraph (A)(ii) shall be transferred to the 
Agency for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal 
reserve bank who, on the day before the designated transfer date, are performing 
consumer financial protection functions on behalf of the Board of Governors shall 
be treated as employees of the Board of Governors for purposes of subparagraphs 
(A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Agency and the Board 
of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation 
necessary to perform or support the consumer financial protection 
functions of the Corporation that are transferred to the Agency by this 
title; and 

(ii) consistent with the number determined under clause (i), jointly
identify employees of the Corporation for transfer to the Agency in a
manner that the Agency and the Board of Directors of the Corporation, in
their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.——All employees of the Corporation
identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.——

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.——The Agency and the
National Credit Union Administration Board shall——

(i) jointly determine the number of employees of the National
Credit Union Administration necessary to perform or support the
consumer financial protection functions of the National Credit Union
Administration that are transferred to the Agency by this title; and

(ii) consistent with the number determined under clause (i), jointly
identify employees of the National Credit Union Administration for
transfer to the Agency in a manner that the Agency and the National
Credit Union Administration Board, in their sole discretion, deem
equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.——All employees of the
National Credit Union Administration identified under subparagraph (A)(ii) shall
be transferred to the Agency for employment.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE
SERVICE TRANSFERRED.——

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

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline
to make a transfer of authority under subparagraph (A) (and the employees
appointed pursuant thereto) to the extent that such authority relates to positions
excepted from the competitive service because of their confidential, policy-
making, policy-determining, or policy-advocating character, and non-career
positions in the Senior Executive Service (within the meaning of section
3132(a)(7) of title 5, United States Code).

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

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

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

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of
employees shall be deemed a transfer of functions for the purpose of section 3503 of
title 5, United States Code.

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

(d) EQUAL STATUS AND TENURE POSITIONS.—
(1) **EMPLOYEES TRANSFERRED FROM FDIC, FTC, NCUA, OCC, AND OTS.**—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Agency with the same status and tenure as he or she held on the day before the designated transfer date.

(2) **EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.**—

(A) **COMPARABILITY.**—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of employees transferring to the Agency from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) **SERVICE PERIODS CREDITED.**—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) **ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.**—Examiners transferred to the Agency shall not be subject to any additional certification requirements before being placed in a comparable examiner’s position at the Agency examining the same types of institutions as they examined before they were transferred.

(f) **PERSONNEL ACTIONS LIMITED.**—

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

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Agency to—

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

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

(C) reassign a supervisory employee outside his or her locality pay area as defined by the Office of Personnel Management when the Agency determines that the reassignment is necessary for the efficient operation of the Agency.

(g) PAY.—

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

(2) EXCEPTIONS.—Paragraph (1) does not limit the Agency’s right to reduce a transferred employee’s rate of basic pay—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee’s consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Agency.
(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Agency to increase a transferred employee’s pay.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, during the period beginning 1 year after the designated transfer date and ending 3 years after the designated transfer date, that a reorganization of the staff of the Agency is required—

(i) that reorganization shall be deemed a “major reorganization” for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been
appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Agency as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Agency is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the
Federal home loan banks, the Board of Governors, a Federal reserve bank, the
Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) **Benefits.**—

(1) **Retirement Benefits for Transferred Employees.**—

(A) In general.—

(i) Continuation of Existing Retirement Plan.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan as long as he or she remains employed by the Agency.

(ii) Employer’s Contribution.—The Agency shall pay any employer contributions to the existing retirement plan of each transferred employee as required under that plan.

(B) Option for Employees Transferred from Federal Reserve System to Be Subject to Federal Employee Retirement Program.—

(i) Election.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Agency may, during the period beginning 6 months after the designated transfer date and ending 1 year after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) Effective Date of Coverage.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.
(C) AGENCY PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for Agency employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Agency shall deposit into the account established under clause (i) the employer contributions that the Agency makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Agency shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) the term “existing retirement plan” means, with respect to any
employee transferred under this section, the particular retirement plan
(including the Financial Institutions Retirement Fund) and any associated
thrift savings plan of the agency or Federal reserve bank from which the
employee was transferred, which the employee was enrolled in on the day
before the designated transfer date.

(ii) The term "Federal employee retirement program" means the
retirement program for Federal employees established by chapters 83 and
84 of title 5, United States Code.

(2) Benefits other than retirement benefits for transferred
employees.—

(A) During 1st year.—

(i) Existing plans continue.—Each transferred employee may,
for 1 year after the designated transfer date, retain membership in any
other employee benefit program of the agency or bank from which the
employee transferred, including a dental, vision, long term care, or life
insurance program, to which the employee belonged on the day before the
designated transfer date.

(ii) Employer’s contribution.—The Agency shall reimburse the
agency or bank from which an employee was transferred for any cost
incurred by that agency or bank in continuing to extend coverage in the
benefit program to the employee as required under that program or
negotiated agreements.

(B) Dental, vision, or life insurance after 1st year.—If, after the 1-
year period beginning on the designated transfer date, the Agency decides not to
continue participation in any dental, vision, or life insurance program of an
agency or bank from which employees transferred, a transferred employee who is
a member of such a program may, before the Agency’s decision takes effect, elect
to enroll, without regard to any regularly scheduled open season, in—

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

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

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

   (C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year
period beginning on the designated transfer date, the Agency decides not to
continue participation in any long term care insurance program of an agency or
bank from which employees transferred, a transferred employee who is a member
of such a program may, before the Agency’s decision takes effect, elect to apply
for coverage under the Federal Long Term Care Insurance Program established by
chapter 90 of title 5, United States Code, under the underwriting requirements
applicable to a new active workforce member (as defined in Part 875, title 5, Code
of Federal Regulations).

   (D) EMPLOYEE’S CONTRIBUTION.— An individual enrolled in the Federal
Employees Health Benefits program shall pay any employee contribution required
by the plan.

(E) ADDITIONAL FUNDING.—The Agency shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Agency and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a health benefits plan administered by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors, or a Federal reserve bank, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

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

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision on the
day before the designated transfer date shall be eligible for coverage by a
life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of
title 5, United States Code, or in a life insurance plan established by the
Agency, without regard to any regularly scheduled open season and
requirement of insurability.

(ii) EMPLOYEE’S CONTRIBUTION.—An individual enrolled in a life
insurance plan under this clause shall pay any employee contribution
required by the plan.

(iii) ADDITIONAL FUNDING.—The Agency shall transfer to the
Employees’ Life Insurance Fund established under section 8714 of title 5,
United States Code, an amount determined by the Director of the Office of
Personnel Management, after consultation with the Agency and the Office
of Management and Budget, to be necessary to reimburse the Fund for the
cost to the Fund of providing benefits under this subparagraph not
otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees
transferred under this section, enrollment in a life insurance plan
administered by the Board of Governors, the Federal Deposit Insurance
Corporation, the Federal Trade Commission, the National Credit Union
Administration, the Office of the Comptroller of the Currency, the Office
of Thrift Supervision, or a Federal reserve bank immediately before
enrollment in a life insurance plan under chapter 87 of title 5, United
States Code, shall be considered as enrollment in a life insurance plan
under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

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

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Agency—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees’ status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) NO PRIVATE RIGHT OF ACTION.—This section does not provide any transferred
employee with any right of action to require the Agency or any officer or employee of the
Agency to take any action under this section.

(m) IMPLEMENTATION.—In implementing the provisions of this section, the Agency will
work with the Office of Personnel Management and other entities with expertise in matters
related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management
and Budget, in consultation with the Secretary, shall make such additional incidental transfers
and dispositions of assets and liabilities held, used, arising from, available, or to be made
available, in connection with the functions transferred by this title, as the Director may determine
necessary to accomplish the purposes of this title.

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

SEC. 1066 INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Agency
under this subtitle until 3 of the appointed Board members are confirmed by the Senate in
accordance with section 1012.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The
Department of the Treasury may provide administrative services necessary to support the
Agency before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—For the purposes of
carrying out the authorities granted in this section, there are appropriated to the Department of
the Treasury such sums as are necessary. Notwithstanding any other provision of law, such
amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

Subtitle G—Regulatory Improvements

SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers’ addresses shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—
(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency, or to a Federal banking agency, in accordance with rules prescribed by the Agency.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under rules prescribed by the Agency.

(d) AGENCY USE.—The Agency—

(1) shall use the data on branches and deposit accounts acquired under this section as part of the examination of a financial institution under the Community Reinvestment Act of 1977;
(2) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(3) may use the data for any other purpose as permitted by law.

(e) RULES AND GUIDANCE.—The Agency shall prescribe such rules and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section. The Agency shall prescribe rules regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of rules prescribed thereunder.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply—

(1) AGENCY.—The term “Agency” means the Consumer Financial Protection Agency.

(2) CREDIT UNION.—The term “credit union” means a Federal credit union or State credit union or State-chartered credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(3) DEPOSIT ACCOUNT.—The term “deposit account” includes any checking account, savings account, credit union share account, and other type of account as defined by the Agency.

(4) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Board of Governors, the National Bank Supervisor, the Federal Deposit Insurance Corporation, or the National Credit Union Administration; and the term “Federal banking agencies” means all of those agencies.

(5) FINANCIAL INSTITUTION.—The term “financial institution”—
(A) has the meaning given to the term “insured depository institution” in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1072. SMALL BUSINESS DATA COLLECTION (FURTHER AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT).

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section—

“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.

“(a) PURPOSE.—The purpose of this provision is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women- and minority-owned small businesses.

“(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

“(1) inquire whether the business is a women- or minority-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means and whether or not such application is in response to a solicitation by the financial institution; and

“(2) maintain a record of the responses to such inquiry separate from the
application and accompanying information.

“(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

“(d) NO ACCESS BY UNDERWRITERS.—

“(1) Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

“(2) If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution will provide notice to the applicant of the access of the underwriter to this information, along with notice that the financial institution may not discriminate on this basis of this information.

“(e) FORM AND MANNER OF INFORMATION.—

“(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Agency, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

“(2) ITEMIZED.—Information compiled and maintained under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following—
“(A) The number of the application and the date the application was received;

“(B) The type and purpose of the loan or other credit being applied for;

“(C) The amount of the credit or credit limit applied for and the amount of the credit transaction or the credit limit approved for such applicant;

“(D) The type of action taken with respect to such application and the date of such action;

“(E) The census tract in which is located the principal place of business of the small business loan applicant;

“(F) The gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application;

“(G) The race and ethnicity of the principal owners of the business; and

“(H) Any additional data the Agency determines would aid in fulfilling the purposes of this section.

“(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, and any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

“(4) DISCRETION TO DELETE OR MODIFY PUBLICLY-AVAILABLE DATA.—The Agency may, at its discretion, delete or modify data collected under this section which is or will be available to the public if the Agency determines that the deletion or
modification of the data would advance a compelling privacy interest.

“(f) AVAILABILITY OF INFORMATION.—

“(1) SUBMISSION TO AGENCY.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency.

“(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Agency. In addition, the Agency shall annually provide this data to the public. The procedures for disclosing this information to the public will be determined by the Agency.

“(3) COMPILATION OF AGGREGATE DATA.—The Agency may, at its discretion, compile for its own use compilations of aggregate data. The Agency may also, at its discretion, make public such compilations of aggregate data.

“(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FINANCIAL INSTITUTION.—The term ‘financial institution’ means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

“(2) MINORITY-OWNED BUSINESS.—The term ‘minority-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.
“(3) WOMEN-OWNED BUSINESS.—The term ‘women-owned business’ means a
business—

“(A) more than 50 percent of the ownership or control of which is held by
1 or more women; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or
more women.

“(4) MINORITY.—The term ‘minority’ has the meaning given to such term by
section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act
of 1989.

“(5) SMALL BUSINESS LOAN.—The term ‘small business loan’ shall be defined by
the Agency, which may take into account—

“(A) the gross revenues of the borrower;

“(B) the total number of employees of the borrower;

“(C) the industry in which the borrower has its primary operations; and

“(D) the size of the loan.

“(h) AGENCY ACTION.—

“(1) IN GENERAL.—The Agency shall prescribe such rules and issue guidance as
may be necessary to carry out, enforce, and compile data pursuant to this section.

“(2) EXCEPTIONS.—The Agency, by rule or order, may adopt exceptions to any
requirement of this section and may, conditionally or unconditionally, exempt any
financial institution or class of institutions from the requirements of this section as the
Agency deems necessary or appropriate to carry out the purposes and objectives of this
section.
“(3) GUIDANCE.—The Agency shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for the purposes of this section.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(A) by striking “or” after the semicolon at the end of paragraph (3);

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

and

(C) by inserting after paragraph (4), the following new paragraph:

“(5) to make an inquiry under section 704B in accordance with the requirements of such section.”; and

(2) Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended as described in section 1079(b) of this title.

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704A the following new item:

“704B. Small business loan data collection.”.

(d) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

Subtitle H—Conforming Amendments
SEC. 1073. AMENDMENTS TO THE INSPECTOR GENERAL ACT


(b) EFFECTIVE DATE.—This section shall become effective on the date of enactment of this Act.

SEC. 1074. AMENDMENTS TO THE PRIVACY ACT OF 1974.

(a) Section 552a of title 5, United States Code, is amended by adding at the end the following new subsection:

“(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with respect to the Consumer Financial Protection Agency.”.

(b) EFFECTIVE DATE.—This section shall become effective on the date of enactment of this Act.

SEC. 1075. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3802(1)) is amended by striking paragraphs (B) and (C) in their entirety.

(b) Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) in subsection (a)—

(A) in paragraphs (1), (2), and (3), by inserting after the words “transactions made” each place those words appear the words “on or before the
designated transfer date, as determined in section 1062 of the Consumer Financial Protection Agency Act of 2009; 

(B) in paragraph (2), by striking “and” at the end;

(C) in paragraph (3), by striking the period at the end and inserting “; and”;

(D) by adding at the end the following new paragraph:

“(4) with respect to transactions made after the designated transfer date, as determined in section 1062 of the Consumer Financial Protection Agency Act of 2009, only in accordance with regulations governing alternative mortgage transactions as issued by the Consumer Financial Protection Agency for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Agency with regard to federally chartered housing creditors under laws other than this section.”

(2) by amending subsection (c) to read as follows:

“(c) An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State Constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State Constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State Constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.

(3) by adding at the end the following new subsection:

“(d) The Consumer Financial Protection Agency shall—

“(1) review the regulations identified by the Comptroller of the Currency,
National Credit Union Administration, and the Director of the Office of Thrift Supervision (as those rules exist on the designated transfer date, as determined in section 1062 of the Consumer Financial Protection Agency Act of 2009) as applicable under subsection (a)(1) – (3);

“(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of Title X of the Consumer Financial Protection Agency Act of 2009; and

“(3) promulgate regulations under subsection (a)(4) after the designated transfer date, as determined in section 1062 of the Consumer Financial Protection Agency Act of 2009.”.

(b) This section shall become effective on the designated transfer date.

(c) The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1076. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

(a) AMENDMENT TO SECTION 802.—Section 802(b) (12 U.S.C. 2901(b)) is amended by striking “each appropriate Federal financial supervisory agency” and inserting “the Consumer Financial Protection Agency”.

(b) AMENDMENT TO SECTION 803.—Section 803 (12 U.S.C. 2902) is amended by adding a new paragraph at the end as follows—

“(5) the term ‘Agency’ means the Consumer Financial Protection Agency.”.

(c) AMENDMENT TO SECTION 804.—Section 804 (12 U.S.C. 2903) is amended—

(1) by amending subsection (a) to read as follows:
“(a) IN GENERAL.—In connection with its examination of a financial institution—

“(1) the Agency shall assess the institution’s record of meeting the credit card
needs of its entire community, including low- and moderate income neighborhoods,
consistent with the safe and sound operation of such institution; and

“(2) the appropriate Federal financial supervisory agency shall take such
assessment into account in its evaluation of an application for a deposit facility by such
institution.”;

(2) in subsection (b), by striking “appropriate Federal financial supervisory
agency” and inserting “Agency”;

(3) in subsection (c)(2)—

(A) in subparagraph (A), by striking “appropriate Federal financial
supervisory agency” and inserting “Agency”; and

(B) in subparagraph (B), by striking “such agency.” and inserting “the
Agency.”.

(d) AMENDMENTS TO SECTION 805.—Section 805 (12 U.S.C. § 2904) is amended by
striking “Each appropriate Federal financial supervisory agency” and inserting “The Agency”.

(e) AMENDMENTS TO SECTION 806.—Section 806 (12 U.S.C. § 2905) is amended as
follows:

“The Agency shall prescribe rules to carry out the purposes of this chapter.”.

(f) AMENDMENTS TO SECTION 807.— Section 807 (12 U.S.C. § 2906) is amended by—

(1) in subsection (a), by striking “appropriate Federal financial supervisory
agency” and inserting “Agency”;

(2) in subsection (b), by—
(A) striking “appropriate Federal financial supervisory agency’s” and inserting “Agency’s”; and

(B) striking “Federal financial supervisory agencies” and inserting “Agency”;;

(3) in subsection (c)—

(A) in paragraph (1), by adding “or to the Agency.” after “a Federal or State financial supervisory agency”;;

(B) in paragraphs (2) and (3), by striking “appropriate Federal financial supervisory agency” and inserting “Agency”; and

(4) in subsection (d), by—

(A) striking “appropriate Federal financial supervisory agency” and inserting “Agency”; and

(B) striking “Federal financial supervisory agency” and inserting “Agency”.

(g) AMENDMENTS TO SECTION 808.—Section 808 (12 U.S.C. § 2907) is amended by striking “appropriate Federal financial supervisory agency” and inserting “Agency”.

(h) AMENDMENTS TO SECTION 809.—Section 809 (12 U.S.C. § 2908) is amended by striking “appropriate Federal financial supervisory agency” and inserting “Agency”.

SEC. 1077. AMENDMENTS TO THE CONSUMER LEASING ACT OF 1976.

(a) All mentions of “the Board” in the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.) are amended by striking “the Board” and inserting “the Agency.”

SEC. 1078. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

(a) AMENDMENTS TO SECTION 903.—Section 903 of the Electronic Fund Transfer Act (15
U.S.C. 1693a) is amended—

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

“(3) the term ‘Agency’ means the Consumer Financial Protection Agency;”; and

(2) in paragraph (6), by striking “Board” and inserting “Agency”.

(b) AMENDMENTS TO SECTION 904.—Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended—

(1) in subsection (a)—

(A) in the title, by striking “Board” and inserting “Agency”;

(B) by striking “Board” each place it appears and inserting “Agency”;  

(1) in subsection (b) by striking “Board” each place it appears and inserting “Agency”;  

(2) in subsection (c) by striking “Board” each place it appears and inserting “Agency”; and

(3) in subsection (d) by striking “Board” each place it appears and inserting “Agency”.

(c) AMENDMENTS TO SECTION 905.—Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended—

(1) in subsection (a), by striking “Board” each place it appears and inserting “Agency”; and

(2) in subsection (b) by striking “Board” and inserting “Agency”.

(d) AMENDMENT TO SECTION 906.—Section 906(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693d(b)) is amended by striking “Board” and inserting “Agency”.

(e) AMENDMENT TO SECTION 907.—Section 907(b) of the Electronic Fund Transfer Act
(15 U.S.C. 1693e(b)) is amended by striking “Board” and inserting “Agency”.

(f) AMENDMENT TO SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(f)(7)) is amended by striking “Board” and inserting “Agency”.

(g) AMENDMENT TO SECTION 910.—Section 910(a)(1)(E) of the Electronic Fund Transfer Act (15 U.S.C. 1693h(a)(1)(E)) is amended by striking “Board” and inserting “Agency”.

(h) AMENDMENTS TO SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693i(b)(3) is amended by striking “Board” and inserting “Agency”.

(i) AMENDMENTS TO SECTION 915.—Section 915 of the Electronic Fund Transfer Act (15 U.S.C. 1693m) is amended as follows—

(1) in subsection (d)—

(A) in the title—

(i) by striking “BOARD” and inserting “AGENCY”; and

(ii) by striking “FEDERAL RESERVE SYSTEM” and inserting “CONSUMER FINANCIAL PROTECTION AGENCY”;

(B) in the matter after the title—

(i) by striking “Board” each place it appears and inserting “Agency”; and

(ii) by striking “Federal Reserve System” and inserting “Consumer Financial Protection Agency.”

(j) AMENDMENTS TO SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15 U.S.C. 1693o) is amended—

(1) in subsection (a)—

(A) in the matter after the title, by striking “Compliance” and inserting
“Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance”;

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

(C) by amending paragraph (2) to read as follows:

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act.”;

(2) by amending subsection (c) to read as follows:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.”.

(k) AMENDMENTS TO SECTION 918.—Section 918 of the Electronic Fund Transfer Act (15 U.S.C. 1693p) is amended—

(1) in subsection (a), by striking “Board” each place it appears and inserting
“Agency”; and

(2) in subsection (b), by striking “Board” each place it appears and inserting “Agency”.

(l) AMENDMENTS TO SECTION 919.—Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) is amended by striking “Board” each place it appears and inserting “Agency”.

(m) AMENDMENTS TO SECTION 920.—Section 920 of the Electronic Fund Transfer Act (15 U.S.C 1693r) is amended by striking “Board” each place it appears and inserting “Agency”.

SEC. 1079. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

(a) AMENDMENTS TO SECTION 701.—Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking “Board” and inserting “Agency”; 
(B) in paragraph (3), by striking “Board” and inserting “Agency”; 

(2) in subsection (c), paragraph (3), by striking “Board” and inserting “Agency”; 

and 

(3) in subsection (d), by striking “Board” each place it appears and inserting “Agency”.

(b) AMENDMENTS TO SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended to read as follows:

“(c) The term ‘Agency’ refers to the Consumer Financial Protection Agency.”.

(c) AMENDMENTS TO SECTION 703.—Section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b) is amended—
(1) by striking the title and inserting the following new title:

“PROMULGATION OF REGULATIONS BY THE AGENCY”;

(2) in subsection (a)—

(A) by striking “(c) REGULATIONS.”;

(B) by striking “Board” each place it appears and inserting “Agency”; and

(C) by striking subsection (b) in its entirety; and

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e).

(d) AMENDMENTS TO SECTION 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—

(1) in subsection (a)—

(A) in the matter after the title, by striking “Compliance” and inserting “Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance”;

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

(C) by amending paragraph (2) to read as follows:

“(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in case of a covered person under that Act.”;

(2) by amending subsection (c) to read as follows—

“(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 1022 of the
Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Agency under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

(3) in subsection (d), by striking “Board” and inserting “Agency”.

(e) AMENDMENT TO SECTION 704A.—Section 704A(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691c-1(a)(1)) is amended in by striking “Board” and inserting “Agency”.

(f) AMENDMENTS TO SECTION 705.—Section 705 of the Equal Credit Opportunity Act (15 U.S.C. 1691d) is amended—

(1) in subsection (f), by striking “Board” each place it appears and inserting “Agency”; and

(2) in subsection (g), by striking “Board” and inserting “Agency”.

(g) AMENDMENTS TO SECTION 706.—Section 706(e) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(e) ) is amended—

(1) in the title—

(A) by striking “BOARD” each place it appears and inserting “AGENCY”;
and

(B) by striking “FEDERAL RESERVE SYSTEM” and inserting “CONSUMER
FINANCIAL PROTECTION AGENCY”;  

(2) in the matter after the title—

(A) by striking “Board” each place it appears and inserting “Agency”; and

(B) by striking “Federal Reserve System” and inserting “Consumer
Financial Protection Agency”.

(f) AMENDMENTS TO SECTION 707.—Section 707 of the Equal Credit Opportunity Act (15
U.S.C. 1691f) is amended by striking “Board” each place it appears and inserting “Agency”.

SEC. 1080. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENTS TO SECTION 605.—Section 605(f)(1) of the Expedited Funds
Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting after “Board” the following: “in
consultation with the Director of the Consumer Financial Protection Agency”.

(b) AMENDMENTS TO SECTION 609.—Section 609(a) of the Expedited Funds
Availability Act (12 U.S.C. 4008(a)) is amended by inserting after “Board” the
following “in consultation with the Director of the Consumer Financial Protection Agency”.

SEC. 1081. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

each place it appears and inserting “Agency”.

SEC. 1082. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE
FAIR AND ACCURATE CREDIT TRANSACTIONS ACT.

(a) Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(1) by inserting after subsection (v) the following new subsection:
“(w) The term ‘Agency’ means the Consumer Financial Protection Agency.”

(2) by redesignating the existing subsections (w) and (x) as (x) and (y).

(b) Except as provided in subsections (c) through (i) of this section, the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(1) by striking “Federal Trade Commission” each place it appears and inserting “Agency”;

(2) by striking “FTC” each place it appears and inserting “Agency”;

(3) by striking “the Commission” each place it appears and inserting “the Agency”;

(4) by striking the phrase “The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly” each place it appears and inserting “The Agency shall”.

(c) Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is amended by striking “Board of Governors of the Federal Reserve System” and inserting “Agency”.

(d) Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C.1681b(g)) is amended—

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

“(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Agency (with respect to any covered person subject to the jurisdiction of such agency under paragraph (2) of section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).”
(2) by amending paragraph (5) to read as follows:

“(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

“(A) REGULATIONS REQUIRED.—The Agency may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.”

(3) by striking paragraph (6) in its entirety.

(e) Subsection 611(e)(2) of the Fair Credit Reporting Act (15 U.S.C.1681i(e)(2)) is amended to read as follows:

“(2) EXCLUSION. Complaints received or obtained by the Agency pursuant to its investigative authority under the Consumer Financial Protection Agency Act of 2009 shall not be subject to paragraph (1).”

(f) Subparagraph 615(h)(6)(A) of the Fair Credit Reporting Act (15 U.S.C.1681m(h)(6)(A)) is amended to read as follows:

“(A) RULES REQUIRED.—The Agency shall prescribe rules.”

(g) Section 621 of the Fair Credit Reporting Act (15 U.S.C.1681s) is amended—

(1) by amending subsection (a) to read as follows:

“(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

“(1) Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced under
Commission with respect to consumer reporting agencies and all other persons subject
thereto, except to the extent that enforcement of the requirements imposed under this title
is specifically committed to some other government agency under subsection (b) hereof.
For the purpose of the exercise by the Federal Trade Commission of its functions and
powers under the Federal Trade Commission Act, a violation of any requirement or
prohibition imposed under this title shall constitute an unfair or deceptive act or practice
45(a)] and shall be subject to enforcement by the Federal Trade Commission under
section 5(b) thereof [15 U.S.C. 45(b)] with respect to any consumer reporting agency or
person subject to enforcement by the Federal Trade Commission pursuant to this
subsection, irrespective of whether that person is engaged in commerce or meets any
other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade
Commission shall have such procedural, investigatory, and enforcement powers (subject
to section 1022 of the Consumer Financial Protection Agency Act of 2009), including the
power to issue procedural rules in enforcing compliance with the requirements imposed
under this title and to require the filing of reports, the production of documents, and the
appearance of witnesses as though the applicable terms and conditions of the Federal
Trade Commission Act were part of this title. Any person violating any of the provisions
of this title shall be subject to the penalties and entitled to the privileges and immunities
provided in the Federal Trade Commission Act as though the applicable terms and
provisions thereof were part of this title.

“(2) (A) Subject to section 1022 of the Consumer Financial Protection Agency
Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

“(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) [15 U.S.C. 1681s-2] unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.”

(2) by amending subsection (b) to read as follows—

“(b) ENFORCEMENT BY OTHER AGENCIES.—Subject to Section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) of section 615 [15 U.S.C. 1681m] shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of
“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the National Bank Supervisor;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board of Governors of the Federal Reserve System; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

“(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act;

“(3) the Federal Credit Union Act [12 U.S.C. §§ 1751 et seq.], by the Administrator of the National Credit Union Administration [National Credit Union Administration Board] with respect to any Federal credit union;

“(4) subtitle IV of title 49 [49 U.S.C. §§ 10101 et seq.], by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

“(5) the Federal Aviation Act of 1958 [49 U.S.C. App. §§ 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act [49 U.S.C. Appx §§ 1301 et seq.]; and
“(6) the Packers and Stockyards Act, 1921 [7 U.S.C. §§ 181 et seq.] (except as
provided in section 406 of that Act [7 U.S.C. §§ 226 and 227]), by the Secretary of
Agriculture with respect to any activities subject to that Act.

“The terms used in paragraph (1) that are not defined in this title or otherwise defined in
section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. §1813(s)) shall have the
meaning given to them in section 1(b) of the International Banking Act of 1978 (12
U.S.C. § 3101).”.

(3) by amending subsection (e) to read as follows:

“(e) REGULATORY AUTHORITY.—The Agency shall prescribe such regulations as
necessary to carry out the purposes of this Act with respect to a covered person described
in subsection (b).”

(h) Section 623 of the Fair Credit Reporting Act (15 U.S.C.1681s-2) is amended—

(1) by amending subparagraph (a)(7)(D) to read as follows—

“(D) MODEL DISCLOSURE

“(i) DUTY OF AGENCY TO PREPARE.—The Agency shall prescribe a
brief model disclosure a financial institution may use to comply with
subparagraph (A), which shall not exceed 30 words.

“(ii) USE OF MODEL NOT REQUIRED.—No provision of this
paragraph shall be construed as requiring a financial institution to use any
such model form prescribed by the Agency.

“(iii) COMPLIANCE USING MODEL.—A financial institution shall be
deemed to be in compliance with subparagraph (A) if the financial
institutions uses any such model form prescribed by the Agency, or the
financial institution uses any such model form and rearranges its format.”.

(2) by amending subsection (e) to read as follows—

“(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED

“(1) GUIDELINES. The Agency shall, with respect to the entities that are subject to its enforcement authority under section 621—

“(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

“(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures or implementing the guidelines established pursuant to subparagraph (A).

“(2) CRITERIA. In developing the guidelines required by paragraph (1)(A), the Agency shall—

“(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

“(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

“(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and
“(D) examine the policies and processes that persons that furnish
information to consumer reporting agencies employ to conduct reinvestigations
and correct inaccurate information relating to consumers that has been furnished
to consumer reporting agencies.”

(i) Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 is amended by striking “The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and” and inserting “The Agency, with respect to a person subject to its enforcement authority, and”.

SEC. 1083. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

(a) AMENDMENTS TO SECTION 803.—Section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a) is amended—

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

“(1) The term ‘Agency’ means the Consumer Financial Protection Agency.”; and

(2) renumbering the following paragraphs respectively.

(b) AMENDMENTS TO SECTION 813.—Section 813(e) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692k(e)) is amended by striking “Commission” and inserting “Agency”.

(c) AMENDMENTS TO SECTION 814.—Section 814 (of the Fair Debt Collection Practices Act 15 U.S.C. 1692l) is amended—

(1) by amending subsection (a) to read as follows—

“(a) FEDERAL TRADE COMMISSION.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically
committed to another agency under subsection (b). For purpose of the exercise by the
Commission of its functions and powers under the Federal Trade Commission Act, a violation of
this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the
functions and powers of the Commission under the Federal Trade Commission Act are available
to the Commission to enforce compliance by any person with this title, irrespective of whether
that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade
Commission Act, including the power to enforce the provisions of this title in the same manner
as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”;

(2) in subsection (b)—

(A) in the matter after the title, by striking “Compliance” and inserting
“Subject to section 1022 of the Consumer Financial Protection Agency Act of
2009, compliance”.

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

(C) by amending paragraph (b)(2) to read as follows:
“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009 by the
Agency in the case of a covered person under the Act”; and

(3) in subsection (d), by striking “Commission” and inserting “Agency”.

(d) AMENDMENTS TO SECTION 815.—Section 815 (15 U.S.C. § 1692m) is amended by
striking all references to “Commission” and inserting “Agency”.

(e) AMENDMENTS TO SECTION 817.—Section 817 (15 U.S.C. § 1692o) is amended by
striking all references to “Commission” and inserting “Agency”.

SEC. 1084. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.
(a) Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended to add a new paragraph (6), as follows:

“(6) REFERRAL TO CONSUMER FINANCIAL PROTECTION COMMISSION.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Agency when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in section 1022(e)(2) of the Consumer Financial Protection Agency Act of 2009, by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.”.

(b) Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) in subsection (c), by striking “Federal Trade Commission” and inserting “Agency”;

(2) in subsection (d), by striking “Federal Trade Commission” and inserting “Agency”;

(3) in subsection (e)—

(A) in paragraph (1), by striking “Federal Trade Commission” and inserting “Agency”; and

(B) by adding at the end the following new paragraph:

“(5) AGENCY.—The term “Agency” means the Consumer Financial Protection Agency.”.

(e) Section 43(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(f)) is amended—

(1) by amending paragraph (1) to read as follows:
“(1) **LIMITED ENFORCEMENT AUTHORITY.**—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Agency Act of 2009 by the Agency.”;

(2) in paragraph (2), by amending subparagraph (C) to read as follows:

“(C) **LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.**—If the Agency has instituted an enforcement action for a violation of this section, no appropriate State supervisory may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Agency for any violation of this section that is alleged in that complaint.”.

**SEC. 1085. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.**

(a) Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

(1) by striking “The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,” and inserting “The Consumer Financial Protection Agency and”; and

(2) by striking “, and the Federal Trade Commission”.

(b) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

(1) in the matter after the title of subsection, by striking “This subtitle and the regulations prescribed thereunder shall be enforced by” and inserting “Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the regulations prescribed thereunder shall be enforced by the Consumer Financial Protection Agency,”;
(2) by striking paragraph (1)(D); and

(3) by inserting after paragraph (7) the following new paragraph:

“(8) Under the Consumer Financial Protection Agency Act of 2009, by the
Consumer Financial Protection Agency in the case of financial institutions and
other covered persons subject to the jurisdiction of the Agency under that Act, but
not with respect to the standards under section 501.”.

(c) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended by inserting “, other than the Consumer Financial Protection Agency, ” after “subsection (a)”.

SEC. 1086. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.

(a) Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by inserting a new paragraph (1) to read as follows—

“(1) the term ‘Agency’ means the Consumer Financial Protection Agency.”; and

(2) by redesignating existing paragraphs (1) through (6) as paragraphs (2) through
(7).

(b) Except as provided in subsections (c), (d), (e), and (f) of this section, all references to

(c) Subsection 304(h) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended to read as follows—

“(h) SUBMISSION TO AGENCIES.—The data required to be disclosed under
subsection (b) shall be submitted to the Agency and to the appropriate agency for each
institution reporting under this title. Notwithstanding the requirement of section
304(a)(2)(A) for disclosure by census tract, the Agency, in cooperation with other
appropriate regulators, including—

“(1) the National Bank Supervisor for national banks and Federal branches,
Federal agencies of foreign banks, and savings associations;
“(2) the Federal Deposit Insurance Corporation for banks insured by the Federal
Deposit Insurance Corporation (other than members of the Federal Reserve System),
mutual savings banks, insured State branches of foreign banks, and any other depository
institution described in section 303(2)(A) which is not otherwise referred to in this
paragraph;
“(3) the National Credit Union Administration Board for credit unions; and
“(4) the Secretary of Housing and Urban Development for other lending
institutions not regulated by the agencies referred to in paragraphs (1) through (4), shall
develop regulations prescribing the format for such disclosures, the method for
submission of the data to the appropriate regulatory agency, and the procedures for
disclosing the information to the public. These regulations shall also require the
collection of data required to be disclosed under subsection (b) with respect to loans sold
by each institution reporting under this title, and, in addition, shall require disclosure of
the class of the purchaser of such loans. Any reporting institution may submit in writing
to the Agency or to the appropriate agency such additional data or explanations as it
deems relevant to the decision to originate or purchase mortgage loans.”

(d) Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is
amended—

(1) by amending subsection (b) to read as follows—
“(b) POWERS OF CERTAIN OTHER AGENCIES.—Compliance with the requirements imposed under this title shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the National Bank Supervisor;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), insured State branches of foreign banks, and any other depository institution not referred to in this paragraph or paragraph (2) or (3) of this subsection, by the Board of Directors of the Federal Deposit Insurance Corporation;

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act;

“(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

“(4) other lending institutions, by the Secretary of Housing and Urban
Development.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).”

(2) by inserting at the end of section 305 the following new subsection:

“(d) OVERALL ENFORCEMENT AUTHORITY OF THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Agency may exercise its authorities under the Consumer Financial Protection Agency Act of 2009 to exercise principal authority to examine and enforce compliance by any person with the requirements under this title.”

(e) Subsection 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended to read as follows—

“(b) The Agency may by regulation exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the National Bank Supervisor under section 8 of the Federal Deposit Insurance Act in the case of national banks and savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.”

(f) Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is
amended to read as follows:

“(a)(1) The Director of the Consumer Financial Protection Agency, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Consumer Financial Protection Agency deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

“(2) There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

“(3) The Director of the Consumer Financial Protection Agency is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

“(b) The Director of the Consumer Financial Protection Agency shall recommend to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such additional legislation as the Director of the Consumer Financial Protection Agency deems appropriate to carry out the purpose of this title.”

(g) Section 304(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(b)) is amended—

(1) in paragraph (4), by inserting “age,” before “and gender”; 
(2) at the end of paragraph (3), by striking “and”; 
(3) at the end of paragraph (4), by striking the period; and
(4) by adding at the end of section 304(b) the following new paragraphs:

“(5) the number and dollar amount of mortgage loans grouped according to the following measurements:

“(A) the total points and fees payable at origination in connection with the mortgage as determined by the Agency, taking into account 15 U.S.C. 1602(aa)(4);

“(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

“(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

“(D) such other information as the Agency may require.

“(6) the number and dollar amount of mortgage loans and completed applications grouped according to the following measurements:

“(A) the value of the real property pledged or proposed to be pledged as collateral;

“(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

“(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully-amortizing payments during any portion of the loan term;

“(D) the actual or proposed term in months of the mortgage loan;

“(E) the channel through which application was made, including retail,
broker, and other relevant categories;

“(F) as the Agency may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in Section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

“(G) as the Agency may determine to be appropriate, a universal loan identifier that corresponds to the real property pledged or proposed to be pledged as collateral;

“(H) as the Agency may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

“(I) the credit score of mortgage applicants and mortgagors in such form as the Agency may prescribe; and

“(J) such other information as the Agency may require.”;

(5) in subsection (j)(2)(B)(i), by inserting “credit score or similar measurement,” after “number,”;

(6) in subsection (h)—

(A) by striking “subsection (b)(4) of this section shall be submitted” and inserting “subsection (b) of this section shall be submitted”; and

(B) by striking “subsection (b)(4) of this section with respect” and inserting “subsections (b) of this section with respect”;

(7) in subsection (i), by striking “subsection (b)(4)” and inserting “subsections (b)(4), (b)(5), and (b)(6)”;

(8) in subsection(j)—
(A) in paragraph (1), by striking “(as” and inserting “(containing loan-
level and application-level information relating to disclosures required under
subsections (a) and (b) and as otherwise’’;

(B) by amending paragraph (3) to read as follows:

“(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the
disclosure requirement of paragraph (1) if the institution provides the information
required under such paragraph in such formats as the Agency may require’’;

(C) in paragraph (2)(A), by striking “in the format in which such
information is maintained by the institution” and inserting “in such formats as the
Agency may require”; and

(9) by amending subsection (m)(2) to read as follows:

“(m)(2) FORM OF INFORMATION.— In complying with paragraph (1), a depository
institution shall provide the person requesting the information with a copy of the
information requested in such formats as the Agency may require’’.

SEC. 1087. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY

(a) Section 158(a) of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C.
1601 note) is amended by striking “Consumer Advisory Council of the Board” and inserting
“Advisory Board to the Agency”.

(b) The Home Ownership and Equity Protection Act of 1994 is amended by striking
“Board” each place it appears and inserting “Agency”.

SEC. 1088. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009 (AS
AMENDED BY THE CREDIT CARD ACCOUNTABILITY
RESPONSIBILITY AND DISCLOSURE ACT OF 2009).

(a) Section 626(a) of the Omnibus Appropriations Act, 2009 is amended—

(1) by amending paragraph (1) to read as follows—

“(1) The Consumer Financial Protection Agency shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this subsection shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Agency Act of 2009.”;

(2) by striking paragraph (2);

(3) by striking paragraph (3); and

(4) by amending paragraph (4) to read as follows—

“(4) The Consumer Financial Protection Agency shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Consumer Financial Protection Agency Act of 2009 were incorporated into and made part of this section.”

(b) Section 626(b) of the Omnibus Appropriations Act, 2009 is amended—

(1) by striking “Federal Trade Commission” and inserting “Consumer Financial Protection Agency”;

(2) by striking “the Commission” and inserting “the Consumer Financial
(3) by striking “primary Federal regulatory” and inserting “Consumer Financial Protection Agency”.

SEC. 1089. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT.

(a) Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2602) is amended by adding at the end the following new paragraph—

“(9) the term ‘Agency’ means the Consumer Financial Protection Agency.”

(b) Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2603) is amended—

(1) in subsection (a), by striking the first sentence and inserting the following:

“The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”;

(2) by striking “Secretary” each place it appears and inserting “Agency”; and

(3) by striking “form” each place it appears and inserting “forms”.

(c) Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2604) is amended—

(1) by striking “Secretary” each place it appears, and inserting “Agency”; and
(2) by striking the first sentence of subsection (a), and inserting—

“The Agency shall prepare and distribute booklets jointly complying with the requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.”.

(d) Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by striking “Secretary” and inserting “Agency”; and by striking “by regulations that shall take effect not later than April 20, 1991,”.

(e) Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended by striking “Secretary” and inserting “Agency”.

(f) Section 8(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607(d)) is amended—

(1) in the title, by inserting “AGENCY AND” before “SECRETARY”;

(2) in paragraph (4), by striking “The Secretary,” and inserting “The Agency, the Secretary,”; and

(3) at the end of paragraph (4), inserting the following—

“However, to the extent that a Federal law authorizes the Agency and other federal and state agencies to enforce or administer the law, the Agency shall have primary authority to enforce or administer that Federal law in accordance with section 1022 of the Consumer Financial Protection Agency Act of 2009.”

(g) Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2609(d)) is amended by striking “Secretary” and inserting “Agency”.

is amended by inserting “the Agency,” before “the Secretary”.

(i) Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2616) is amended by striking “Secretary” and inserting “Agency”.

(j) Section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2617) is amended by striking “Secretary” each place where it appears and inserting “Agency”.

SEC. 1090. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) AMENDMENTS TO SECTION 1101.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) by amending paragraph (1) to read as follows—

“(1) ‘financial institution’ means any national bank, card issuer as defined in section 1602(n) of Title 15, credit union or consumer finance institution located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;”;

(2) in paragraph (6)—

(A) in subparagraph (A), by adding “and” after the semi-colon;

(B) in subparagraph (B) by striking “; and” and inserting a period; and

(C) by deleting subparagraph (C) in its entirety.

(3) in paragraph (7)—

(A) by amending subparagraph (B) to read as follows:

“(B) the Director of the National Bank Supervisor;”;

(B) by amending subparagraph (E) to read as follows—

“(E) the Consumer Financial Protection Agency;”.

(b) AMENDMENTS TO SECTION 1112.—Section 1112 of the Right to Financial
Privacy Act (12 U.S.C. 3412) is amended in subsection (e) by deleting “and the Commodity Futures Trading Commission is permitted.” and inserting “the Commodity Futures Trading Commission, and the Consumer Financial Protection Agency is permitted.”.

(c) AMENDMENTS TO SECTION 1113.—Section 1113 of the Right to Financial Privacy Act (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

“(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION AGENCY.—Nothing in this chapter shall apply to the examination by or disclosure to the Consumer Financial Protection Agency of financial records or information in the exercise of its authority with respect to a financial institution.”.

SEC. 1091. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

(a) Section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is amended as follows—

(1) by striking the definition of “FEDERAL BANKING AGENCIES” and inserting the following—

“AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”; and

(2) by striking the definition of “SECRETARY” and inserting the following—

“DIRECTOR.—The term ‘Director’ means the Director of the Consumer Financial Protection Agency.”

(b) The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended as follows—

(1) by striking “a Federal banking agency” each place it appears and inserting
“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
BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM”; and

(2) adding at the end the following new subsection—

“(f)(1) The Agency is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

“(2) Such regulations shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans as well as the need to ensure a competitive origination market that maximizes consumers’ access to affordable and sustainable mortgage loans.”.

(e) Section 1510 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is amended to read as follows:

“SEC. 1510. FEES.

“The Agency, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.”.

(f) Section 1513 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended to read as follows—

“SEC. 1513. LIABILITY PROVISIONS.

“The Agency, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, or any officer or employee of any such entity, shall not by subject to any civil action or proceeding for monetary damages by
reason of the good faith action or omission of any officer or employee of any such entity, while
acting within the scope of office or employment, relating to the collection, furnishing, or
dissemination of information concerning persons who are loan originators or are applying for
licensing or registration as loan originators.”.

(g) Section 1514 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is
amended in the title by striking “UNDER HUD BACKUP LICENSING SYSTEM” and
inserting “BY THE AGENCY”.

SEC. 1092. AMENDMENTS TO THE TRUTH IN LENDING ACT.

(a) Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by—

(1) inserting after subsection (a) a new subsection (b) as follows:

“(b) The term “Agency” means the Consumer Financial Protection Agency.”; and

(2) redesignating the existing subsections (b) through (bb) as (c) through (cc).

(b) The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking “Board”
each place it appears and inserting “Agency” except—

(1) in section 140(d) (15 U.S.C. 1650) where “Board” is to remain unchanged in
all instances;

(2) as provided in subsection (d).

(c) Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by

striking the first sentence and inserting the following:

“The Agency shall publish a single, integrated disclosure for mortgage loan transactions,
including real estate settlement cost statements, which include the disclosure requirements of this
title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures
Act (Pub. L. 93-533, 12 U.S.C. 2601 et seq.) that, taken together, may apply to transactions
subject to both or either law. The purpose of such model disclosure shall be to facilitate
compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in
understanding the transaction by utilizing readily understandable language to simplify the
technical nature of the disclosures.”.

(d) Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

(1) by amending subsection (a) to read as follows—

“(a) ENFORCING AGENCIES.—Subject to Section 1022 of the Consumer Financial
Protection Agency Act of 2009, compliance with the requirements imposed under this title shall
be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign
banks, by the National Bank Supervisor;

“(B) member banks of the Federal Reserve System (other than national
banks), branches and agencies of foreign banks (other than Federal branches,
Federal agencies, and insured State branches of foreign banks), commercial
lending companies owned or controlled by foreign banks, and organizations
operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other
than members of the Federal Reserve System) and insured State branches of
foreign banks, by the Board of Directors of the Federal Deposit Insurance
Corporation.

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the
Agency in the case of a covered person under that Act.
“(3) the Federal Credit Union Act, by the Director of the Bureau of Federal Credit
Unions with respect to any Federal credit union.

“(4) the Federal Aviation Act of 1958, by the Secretary of Transportation with
respect to any air carrier or foreign air carrier subject to that Act.

“(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of
that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

“(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect
to any Federal land bank, Federal land bank association, Federal intermediate credit bank,
or production credit association.”.

(2) by amending subsection (c) to read as follows—

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except
to the extent that enforcement of the requirements imposed under this title is specifically
committed to some other Government agency under subsection (a) and subject to Section 1022
of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall
enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of
its functions and powers under the Federal Trade Commission Act, a violation of any
requirement imposed under this title shall be deemed a violation of a requirement imposed under
that Act. All of the functions and powers of the Federal Trade Commission under the Federal
Trade Commission Act are available to the Commission to enforce compliance by any person
with the requirements under this title, irrespective of whether that person is engaged in
commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.”

(e) The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking “Federal
Trade Commission” each place it appears and inserting “Agency” except—
(1) Section 108(c) of the Truth in Lending Act (15 U.S.C. 1607(c)), which is to be amended as specified in subsection (d);

(2) Section 127(b)(11)(C) of the Truth in Lending Act (15 U.S.C. 1637) is amended to read as follows—

“(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Agency, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: "Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Consumer Financial Protection Agency at this toll-free number: _________________________________ (the blank space to be filled in by the creditor)." A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).”; and

(3) Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended to read as follows—

“(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS. — For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Agency pursuant to subsection (l)(2) of this section shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.”.
SEC. 1093. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

(a) AMENDMENTS TO SECTION 263.—Section 263 of the Truth in Savings Act (12
U.S.C. 4302) is amended in subsection (b) by striking “Board” each time it appears and inserting
“Agency”.

(b) AMENDMENTS TO SECTION 265.—Section 265 of the Truth in Savings Act (12
U.S.C. 4304) is amended by striking “Board” each time it appears and inserting “Agency”.

(c) AMENDMENTS TO SECTION 266.—Section 266 of the Truth in Savings Act is
amended (12 U.S.C. 4305) in subsection (e) by striking “Board” and inserting “Agency”.

(d) AMENDMENTS TO SECTION 269.—Section 269 of the Truth in Savings Act
(12 U.S.C. 4308) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “Board” and inserting “Agency”;  
(B) in paragraph (3), by striking “Board” and inserting “Agency”;  
(C) in paragraph (4), by striking “Board” and inserting “Agency”;  

(2) in subsection (b)—

(A) in paragraph (1), by striking “Board” each time it appears and
inserting “Agency”;  
(B) in paragraph (2), by striking “Board” each time it appears and
inserting “Agency”; and  
(C) in paragraph (3) by striking “Board” and inserting “Agency”.

(e) AMENDMENTS TO SECTION 270.—Section 270 of the Truth in Savings Act (12
U.S.C. 4309) is amended—

(1) in subsection (a)—
(A) in the matter after the title, by striking “Compliance” and inserting “Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(B) in paragraph (1)—

(i) by amending subparagraph (A) to read as follows: “(A) by the Director of the National Bank Supervisor for national banks, and Federal branches and Federal agencies of foreign banks;”;

(ii) by striking subparagraph (C); and

(C) by adding at the end, the following new paragraph: “(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act.”

(2) in subsection (c), by striking “Board” and inserting “Agency”.

(f) AMENDMENTS TO SECTION 272.—Section 272 of the Truth in Savings Act (12 U.S.C. 4311) is amended—

(1) in subsection (a), by striking “Board” and inserting “Agency”; and

(2) in subsection (b), by striking the phrase “regulation prescribed by the Board” each place it appears and inserting “regulation prescribed by the Agency”.

(g) AMENDMENTS TO SECTION 273.—Section 273 of the Truth in Savings Act (12 U.S.C. 4312) is amended in the last sentence by striking “Board” and inserting “Agency”.

(h) AMENDMENTS TO SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended—

(1) in paragraph (2) by striking “Board” and inserting “Agency”; and

(2) by amending paragraph (4) to read as follows:
“(4) AGENCY.—The term "Agency" means the Consumer Financial Protection Agency.”.

SEC. 1094. EFFECTIVE DATE.

The amendments made in sections 1075 through 1093 shall become effective on the designated transfer date.
SEC. 1101. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

(a) Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following new paragraph:

“(5) In any investigation or proceeding in which it appears to the Commission that an unfair or deceptive act or practice is being committed in connection with the marketing, sale, provision or delivery of a consumer financial product or service, the Commission shall consult and coordinate with the Consumer Financial Protection Agency, as the agencies deem to be appropriate.”

(b) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended—

(1) by inserting “this Act or” after “violates” the first place it appears;

(2) by inserting a comma after “chapter” and after “section)”; and

(3) by inserting “a violation of this Act or is” before “prohibited”.

(c) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

“(o) UNLAWFUL ASSISTANCE.—It is unlawful for any person, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act.”
(d) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended—

(1) in subsection (a)(1)(B), by adding after “pursuant to this section” the following: “or with regard to the marketing, sale, provision or delivery to an individual, for personal, family or household purposes, of a consumer financial product or service that is subject to the jurisdiction of the Consumer Financial Protection Agency under the Consumer Financial Protection Agency Act of 2009”;

(2) by amending subsection (b) to read as follows—

“(b) PROCEDURE APPLICABLE.— When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of Title 5 (without regard to any reference in such section to sections 556 and 557 of such title).”;

(3) by striking subsections (c), (d)(1), (d)(2), (f), (i), and (j), and redesignating subsections (e), (g) and (h) as (d), (e) and (f);

(4) by redesignating paragraph (d)(3) as subsection (c);

(5) in subsection (e)—

(A) in paragraph (1)(B), by striking “the transcript required by subsection (c)(5) of this section,”;

(B) in paragraph (2), by striking everything following “error);” and

(C) in paragraph (5), by striking subparagraph (C).
DIVISION D—IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT

TITLE XII—ENHANCED RESOLUTION AUTHORITY

SEC. 1201. SHORT TITLE.

This Act may be cited as the “Resolution Authority for Large, Interconnected Financial Companies Act of 2009”.

SEC. 1202. DEFINITIONS.

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

(1) APPROPRIATE FEDERAL REGULATORY AGENCY. —

(A) CORPORATION AND COMMISSION.—The term “Appropriate Federal Regulatory Agency” means—

(i) the Corporation; and

(ii) the Commission, if the bank holding company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other than an insured depository institution)).

(B) RULES OF CONSTRUCTION.—More than one agency may be an Appropriate Federal Regulatory Agency with respect to any given bank holding company. In such instances, the Commission shall be the Appropriate Federal Regulatory Agency for purposes of section 1203 if the largest subsidiary of the
bank holding company is a broker or dealer as measured by total assets as of the
end of the previous calendar quarter.

(2) BANK HOLDING COMPANY.—The term “bank holding company” means any
company that—

(A) is incorporated or organized under Federal law or the laws of any
State; and

(B) is—

(i) a bank holding company as defined in section 2(a) of the Bank
Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any Tier 1 financial holding company designated by the
Federal Reserve Board as defined in section 2(t) of the Bank Holding
Company Act of 1956, as amended by this Act (12 U.S.C. 1841(r)); or

(iii) any subsidiary of companies described in clauses (i) through
(ii) (other than an insured depository institution, any broker or dealer
registered with the Commission under section 15(b) of the Securities
Exchange Act of 1934 (15 U.S.C. 78o(b)), which is a member of the
Securities Investor Protection Corporation, or an insurance company).

(3) BRIDGE BANK HOLDING COMPANY.—The term “bridge bank holding
company” means a new bank holding company organized by the Appropriate
Federal Regulatory Agency appointed by the Secretary in accordance with section
1209(h).

(4) COMMISSION.—The term “Commission” means the Securities and
Exchange Commission.
(5) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(6) COVERED BANK HOLDING COMPANY.—The term “covered bank holding company” means a bank holding company for which a determination has been made pursuant to and in accordance with section 1203(b).

(7) COVERED SUBSIDIARY.—The term “covered subsidiary” means a subsidiary covered in paragraph (2)(B)(iii) of this section.

(8) CUSTOMER PROPERTY.—The term “customer property” has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

(9) FEDERAL RESERVE BOARD.—The term “Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

(10) FUND.—The term “Fund” means the Bank Holding Company Fund.

(11) INSURANCE COMPANY.—The term “insurance company” means a domestic insurance company, as that term is defined for purposes of title 11 of the United States Code.

(12) SECRETARY.—The term “Secretary” shall mean the Secretary of the Treasury or his designee.

(13) STATE.—The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(14) CERTAIN OTHER TERMS.—The terms “affiliate,” “company,” “control,” “deposit,” “depository institution,” “foreign bank,” “insured depository
institutions,” and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

SEC. 1203. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE APPROPRIATE FEDERAL REGULATORY AGENCY.—

1. VOTE REQUIRED.—At the request of the Secretary or the Chairman of the Federal Reserve Board or, in cases where a bank holding company has a broker or dealer as its largest subsidiary as measured by total assets as of the end of the previous calendar quarter, the Commission, the Federal Reserve Board and the Appropriate Federal Regulatory Agency shall, or on their own initiative, the Federal Reserve Board and the Appropriate Federal Regulatory Agency may, consider whether to make the written recommendation provided for in paragraph (2), which recommendation shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and two-thirds of the members of the board or of the commission then serving of the Appropriate Federal Regulatory Agency, as applicable.

2. RECOMMENDATION REQUIRED.—Any written recommendations made by the Federal Reserve Board and the Appropriate Federal Regulatory Agency under paragraph (1) shall contain the following—

(A) a description of the effect that the default of the bank holding company would have on economic conditions or financial stability in the United States; and

(B) the nature and the extent of assistance or actions that should be provided or taken regarding the bank holding company.
(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the board of directors or commission of the Appropriate Federal Regulatory Agency as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

1. the bank holding company is in default or is in danger of default;
2. the failure of the bank holding company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability or economic conditions in the United States; and
3. any action or assistance under section 1204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of action or assistance in mitigating potential adverse effects on the financial system or economic conditions, the cost to the general fund of the Treasury, and the potential to increase moral hazard on the part of creditors, counterparties, and shareholders in the bank holding company,

the Secretary may take action under section 1204(b) and the Corporation may take one or more actions specified in section 1204.

(c) DOCUMENTATION AND REVIEW.—

1. IN GENERAL.—The Secretary shall—
   (A) document any determination under subsection (b); and,
   (B) retain the documentation for review under paragraph (2).

2. GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under subsection (b), including:
   (A) the basis for the determination;
(B) the purpose for which any action was taken pursuant thereto; and

(C) the likely effect of the determination and such action on the incentives and conduct of bank holding companies and their creditors, counterparties, and shareholders.

(3) REPORT TO CONGRESS.—Within 30 days after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. The notice shall include a description of the basis for the determination.

(d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a bank holding company shall be considered to be in default or in danger of default if any of the following conditions exist, as determined in accordance with that subsection:

(1) a case has been, or likely will promptly be, commenced with respect to the bank holding company under title 11, United States Code;

(2) the bank holding company is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board;

(3) the bank holding company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 1204;

(4) the bank holding company’s assets are, or are likely to be, less than its obligations to creditors and others; or

(5) the bank holding company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.
SEC. 1204. RESOLUTION; ASSISTANCE.

(a) EMERGENCY ASSISTANCE.—Upon the Secretary making the determination provided for in section 1203(b), the Corporation may, with the approval of the Secretary, exercise any authority provided in this subsection including providing the assistance directly or indirectly and separately or in combination, including:

(1) making loans to, or purchasing any debt obligation of, the covered bank holding company or any covered subsidiary;

(2) purchasing assets of the covered bank holding company or any covered subsidiary directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered bank holding company or any covered subsidiary to one or more third parties;

(4) acquiring any type of equity interest or security of the covered bank holding company or any covered subsidiary;

(5) taking a lien on any or all assets of the covered bank holding company or any covered subsidiary, including a first priority lien on all unencumbered assets of the company or any covered subsidiary to secure repayment of any financial assistance provided under this subsection; or

(6) selling or transferring all, or any part thereof, of such acquired assets, liabilities, obligations, equity interests or securities of the covered bank holding company or any covered subsidiary.

(b) APPOINTMENT OF CONSERVATOR OR RECEIVER.—Upon the Secretary making the determination provided for in section 1203(b), the Secretary may appoint one of the Appropriate Federal Regulatory Agencies as conservator or receiver for the covered bank holding company,
except that the Corporation shall be the Appropriate Federal Regulatory Agency appointed in the event that the predominant subsidiary of the covered bank holding company is not a broker or dealer as measured by total assets as of the end of previous calendar quarter.

(c) Emergency Assistance After Appointment of Conservator. — Upon the Secretary appointing a conservator or receiver under subsection (b), the Corporation may take any of the actions described in subsection (a) with respect to the covered bank holding company in conservatorship or receivership.

SEC. 1205. JUDICIAL REVIEW.

If a conservator or receiver is appointed, the covered bank holding company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered bank holding company is located, or in the United States District Court for the District of Columbia, for an order requiring that the conservator or receiver be removed, and the court shall, upon the merits, dismiss such action or direct the conservator or receiver to be removed. Review of such an action shall be limited to the appointment of a conservator or receiver under section 1204.

SEC. 1206. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered bank holding company shall not be liable to the covered bank holding company’s shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the Secretary’s appointment of an Appropriate Federal Regulatory Agency as conservator or receiver for the covered bank holding company under section 1204; or

(2) an acquisition, combination, or transfer of assets or liabilities under section
SEC. 1207. TERMINATION AND EXCLUSION OF OTHER ACTIONS.

The Appropriate Federal Regulatory Agency’s acting as conservator or receiver for a covered bank holding company under this title shall immediately, and by operation of law, terminate any case commenced with respect to the covered bank holding company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered bank holding company, and no such case or proceeding may be commenced with respect to the covered bank holding company at any time while the Appropriate Federal Regulatory Agency acts as conservator or receiver for the covered bank holding company.

SEC. 1208. RULEMAKING.

The Appropriate Federal Regulatory Agencies and the Secretary may jointly prescribe such rules or regulations as they consider necessary or appropriate to implement the provisions of this title.

SEC. 1209. POWERS AND DUTIES OF APPROPRIATE FEDERAL REGULATORY AGENCY.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED BANK HOLDING COMPANY.—The Appropriate Federal Regulatory Agency shall, upon appointment as conservator or receiver for a covered bank holding company under section 1204, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the covered bank holding company, and of any stockholder, member, officer, or director of
such institution with respect to the covered bank holding company and the
assets of the covered bank holding company; and

(ii) title to the books, records, and assets of any previous receiver
or other legal custodian of such covered bank holding company.

(B) OPERATE THE COVERED BANK HOLDING COMPANY.—The Appropriate
Federal Regulatory Agency as conservator or receiver for a covered bank holding
company may—

(i) take over the assets of and operate the covered bank holding
company with all the powers of the members or shareholders, the
directors, and the officers of the covered bank holding company and
conduct all business of the covered bank holding company;

(ii) collect all obligations and money due the covered bank holding
company;

(iii) perform all functions of the covered bank holding company in
the name of the covered bank holding company;

(iv) preserve and conserve the assets and property of the covered
bank holding company; and

(v) provide by contract for assistance in fulfilling any function,
activity, action, or duty of the Appropriate Federal Regulatory Agency as
conservator or receiver.

(C) FUNCTIONS OF COVERED BANK HOLDING COMPANY’S OFFICERS,
DIRECTORS, AND SHAREHOLDERS.—The Appropriate Federal Regulatory Agency
may provide for the exercise of any function by any member or stockholder,
director, or officer of any covered bank holding company for which the
Appropriate Federal Regulatory Agency has been appointed as conservator or
receiver under this section.

(D) POWERS AS CONSERVATOR.—The Appropriate Federal Regulatory
Agency may, as conservator, and subject to all legally enforceable and perfected
security interests in the assets of the covered bank holding company, take such
action as may be—

(i) necessary to put the covered bank holding company in a sound
and solvent condition; and

(ii) appropriate to carry on the business of the covered bank
holding company and preserve and conserve the assets and property of the
covered bank holding company.

(E) ADDITIONAL POWERS AS RECEIVER.—The Appropriate Federal
Regulatory Agency may, as receiver, place the covered bank holding company in
liquidation and proceed to realize upon the assets of the covered bank holding
company in such manner as the Appropriate Federal Regulatory Agency deems
appropriate, including through the sale of assets, the transfer of assets to a bridge
bank holding company established under subsection (h), or the exercise of any
other rights or privileges granted to the receiver under this section.

(F) ORGANIZATION OF NEW COMPANIES.—The Appropriate Federal
Regulator Agency as receiver may organize a bridge bank holding company under
subsection (h).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—
(i) IN GENERAL.—Subject to clause (ii), the Appropriate Federal Regulator Agency as conservator or receiver may—

(I) merge the covered bank holding company with another company; or

(II) transfer any asset or liability of the covered bank holding company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(I) IN GENERAL.—If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such
waiting period, and no further request for information by any Federal agency shall be permitted.

(II) EMERGENCY.—If the Secretary in consultation with the Chairman of the Federal Reserve Board has found that the Appropriate Federal Regulatory Agency must act immediately to prevent the probable failure of 1 or more of the covered bank holding companies involved, the approvals and filings referred to in subclause (I) shall not be required and the transactions may be consummated immediately by the Appropriate Federal Regulatory Agency.

(H) PAYMENT OF VALID OBLIGATIONS.—The Appropriate Federal Regulatory Agency, as conservator or receiver, shall, to the extent funds are available, pay all valid obligations of the covered bank holding company that are due and payable at the time of the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver in accordance with the prescriptions and limitations of this title.

(I) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Appropriate Federal Regulatory Agency may, for purposes of carrying out any power, authority, or duty with respect to a covered bank holding company (including determining any claim against the covered bank holding company and determining and realizing upon any asset of any person in the course of collecting money due the covered bank holding company), exercise any power established
under section 8(n) of the Federal Deposit Insurance Act as if the covered
bank holding company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This section shall not be construed
as limiting any rights that the Appropriate Federal Regulatory Agency, in
any capacity, might otherwise have to exercise any powers described in
clause (i) under any other provision of law.

(J) INCIDENTAL POWERS.—The Appropriate Federal Regulatory Agency,
as conservator or receiver, may—

(i) exercise all powers and authorities specifically granted to
conservators or receivers under this section and such incidental powers as
shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the
Appropriate Federal Regulatory Agency determines is in the best interests
of the covered bank holding company, its customers, its creditors, its
counterparties, or the stability of the financial system.

(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities
in the management and disposition of assets from a covered bank holding
company, the Appropriate Federal Regulatory Agency, as conservator or receiver,
may utilize the services of private persons, including real estate and loan portfolio
asset management, property management, auction marketing, legal, and brokerage
services, if such services are available in the private sector and the Appropriate
Federal Regulatory Agency determines utilization of such services is practicable,
efficient, and cost effective.
(L) SHAREHOLDERS AND CREDITORS OF COVERED BANK HOLDING COMPANY.—Notwithstanding any other provision of law, the Appropriate Federal Regulatory Agency as conservator or receiver for a covered bank holding company pursuant to this section and its succession, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A) shall terminate all rights and claims that the stockholders and creditors of the covered bank holding company may have against the assets of the covered bank holding company or the Appropriate Federal Regulatory Agency arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section.

(M) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Appropriate Federal Regulatory Agency as conservator or receiver for a covered bank holding company shall coordinate with the appropriate foreign financial authorities regarding the resolution of subsidiaries of the covered bank holding company that are established in a country other than the United States.

(2) AUTHORITY OF APPROPRIATE FEDERAL REGULATORY AGENCY TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (3).

(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a covered bank holding company, shall—
(i) promptly publish a notice to the covered bank holding
company’s creditors to present their claims, together with proof, to the
receiver by a date specified in the notice which shall be not less than 90
days after the publication of such notice; and
(ii) republish such notice approximately 1 month and 2 months,
respectively, after the publication under clause (i).

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the
notice published under subparagraph (B)(i) at the time of such publication to any
creditor shown on the covered bank holding company’s books—
(i) at the creditor’s last address appearing in such books; or
(ii) upon discovery of the name and address of a claimant not
appearing on the covered bank holding company’s books, within 30 days
after the discovery of such name and address.

(3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.— Subject to subsection (b), the Appropriate Federal
Regulatory Agency may prescribe rules and regulations regarding the allowance
or disallowance of claims by the Appropriate Federal Regulatory Agency and
providing for administrative determination of claims and review of such
determination.

(B) EXISTING RULES.— Subject to subsection (b), the Appropriate Federal
Regulatory Agency may elect to use the regulations adopted pursuant to the
provisions of section 11 of the Federal Deposit Insurance Act with respect to the
determination of claims for a covered bank holding company as if the covered
bank holding company were an insured depository institution.

(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a covered bank holding company is filed with the Appropriate Federal Regulatory Agency as receiver, the Appropriate Federal Regulatory Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Appropriate Federal Regulatory Agency.

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the covered bank holding company’s books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of
the determination to disallow the claim or judicial determination of
the claim.

(B) ALLOWANCE OF PROVEN CLAIM.—The Appropriate Federal
Regulatory Agency shall allow any claim received on or before the date
specified in the notice published under paragraph (2)(B)(i) by the
Appropriate Federal Regulatory Agency from any claimant which is
proved to the satisfaction of the Appropriate Federal Regulatory Agency.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed
after the date specified in the notice published under paragraph (2)(B)(i)
shall be disallowed and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect
to any claim filed by any claimant after the date specified in the notice
published under paragraph (2)(B)(i) and such claim may be considered by
the receiver if—

(I) the claimant did not receive notice of the appointment of
the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such
claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Appropriate Federal Regulatory Agency
may disallow any portion of any claim by a creditor or claim of security,
preference, or priority which is not proved to the satisfaction of the
Appropriate Federal Regulatory Agency.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a covered bank holding company which is secured by any property or other asset of such covered bank holding company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered bank holding company; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the covered bank holding company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal Reserve bank, or the Secretary, to any covered bank holding company; or

(II) subject to clause (ii), any legally enforceable or perfected security interest in the assets of the covered bank holding company securing any such extension of credit.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Appropriate Federal Regulatory Agency determination pursuant to subparagraph (D) to disallow a claim.
(F) LEGAL EFFECT OF FILING.—

   (i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the Appropriate Federal Regulatory Agency shall constitute a commencement of an action.

   (ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the Appropriate Federal Regulatory Agency shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Appropriate Federal Regulatory Agency as receiver for the covered bank holding company.

(5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

   (A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

   (i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Appropriate Federal Regulatory Agency and the claimant, the period described in paragraph (4)(A)(ii) with respect to any claim against a covered bank holding company for which the Appropriate Federal Regulatory Agency is receiver; or

   (ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i),

the claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the covered bank holding company’s principal place of business is located or the United States District Court for the District of
Columbia (and such court shall have jurisdiction to hear such claim).

(B) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or continue an action commenced before the appointment of the receiver) before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Appropriate Federal Regulatory Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered bank holding company for which the Appropriate Federal Regulatory Agency has been appointed as receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Appropriate Federal Regulatory Agency shall—

(i) determine—
(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to
the procedures established pursuant to paragraph (4); and

(ii) notify the claimant of the determination, and if the claim is
disallowed, provide a statement of each reason for the disallowance and
the procedure for obtaining judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT. — Any claimant who files a
request for expedited relief shall be permitted to file a suit, or to continue such a
suit filed before the appointment of the Appropriate Federal Regulatory Agency
as receiver, seeking a determination of the claimant’s rights with respect to such
security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing
of a request for expedited relief; or

(ii) the date the Appropriate Federal Regulatory Agency denies the
claim.

(D) STATUTE OF LIMITATIONS. — If an action described in subparagraph (C)
is not filed, or the motion to renew a previously filed suit is not made, before the
end of the 30-day period beginning on the date on which such action or motion
may be filed in accordance with subparagraph (B), the claim shall be deemed to
be disallowed as of the end of such period (other than any portion of such claim
which was allowed by the receiver), such disallowance shall be final, and the
claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING. —
(i) **STATUTE OF LIMITATION TOLLED.**—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) **NO PREJUDICE TO OTHER ACTIONS.**—Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Appropriate Federal Regulatory Agency as receiver for the covered bank holding company.

(7) **AGREEMENTS AGAINST INTEREST OF THE RECEIVER.**—No agreement that tends to diminish or defeat the interest of the Appropriate Federal Regulatory Agency as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered bank holding company.

(8) **PAYMENT OF CLAIMS.**—

(A) **IN GENERAL.**—The Appropriate Federal Regulatory Agency as receiver may, in its discretion and to the extent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Appropriate Federal Regulatory Agency pursuant to a final determination pursuant to paragraph (6); or

(ii) determined by the final judgment of any court of competent jurisdiction.
(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver’s sole discretion and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the appropriate Federal Regulatory Agency (in the appropriate Federal Regulatory Agency’s capacity as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF APPROPRIATE FEDERAL REGULATORY AGENCY.—The appropriate Federal Regulatory Agency may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered bank holding company following satisfaction by the receiver of the principal amount of all creditor claims.

(9) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the appropriate Federal Regulatory Agency as conservator or receiver for a covered bank holding company, the appropriate Federal Regulatory Agency may request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver,

in any non-criminal judicial action or proceeding to which such covered bank holding company is or becomes a party.
(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Appropriate Federal Regulatory Agency pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Appropriate Federal Regulatory Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver.

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Appropriate Federal Regulatory Agency as conservator or receiver shall—

(i) have all the rights and remedies available to the covered bank holding company (before the appointment of the conservator or receiver under section 1204) and the Appropriate Federal Regulatory Agency, including but not limited to removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in
this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a
determination of rights with respect to, the assets of any covered bank
holding company for which the Appropriate Federal Regulatory Agency
has been appointed receiver, including any assets which the Appropriate
Federal Regulatory Agency may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered bank
holding company or the Appropriate Federal Regulatory Agency as
receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or
authority as conservator or receiver in connection with any covered bank holding
company for which the Appropriate Federal Regulatory Agency is acting as
conservator or receiver under this section, the Appropriate Federal Regulatory
Agency shall, to the greatest extent practicable, conduct its operations in a manner
which—

(i) maximizes the net present value return from the sale or
disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of
cases;

(iii) minimizes the cost to the general fund of the Treasury;

(iv) mitigates the potential for serious adverse effects to the
financial system and the U.S. economy;

(v) ensures timely and adequate competition and fair and
consistent treatment of offerors; and

(vi) prohibits discrimination on the basis of race, sex, or ethnic
groups in the solicitation and consideration of offers.

(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the
applicable statute of limitations with regard to any action brought by the
Appropriate Federal Regulatory Agency as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim
accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim
accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For
purposes of subparagraph (A), the date on which the statute of limitations begins
to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Appropriate Federal
Regulatory Agency as conservator or receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause
(ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver, the Appropriate Federal Regulatory Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered bank holding company.

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency, as conservator or receiver for any covered bank holding company, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Appropriate Federal Regulatory Agency determines is a debtor of the covered bank holding company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Appropriate Federal Regulatory Agency was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered bank holding company or the Appropriate Federal Regulatory Agency.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Appropriate Federal Regulatory Agency may recover, for
the benefit of the covered bank holding company, the property transferred or, if a
court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated
party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial
transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Appropriate Federal
Regulatory Agency may not recover under subparagraph (B)—

(i) any transfer that takes for value, including satisfaction or
securing of a present or antecedent debt, in good faith, or

(ii) any immediate or mediate good faith transferee of such
transferee.

(D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Appropriate
Federal Regulatory Agency as receiver of a covered bank holding company under
this subsection shall be superior to any rights of a trustee or any other party (other
than any party which is a Federal agency) under title 11, United States Code.

(E) DEFINITION.—For purposes of this subsection, the term
“institution-affiliated party” means—

(i) any director, officer, employee, or controlling stockholder of, or
agent for, a covered bank holding company;

(ii) any shareholder, consultant, joint venture partner, and any
other person as determined by the Appropriate Federal Regulatory Agency
(by regulation or otherwise) who participates in the conduct of the affairs
of a covered bank holding company; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in–

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty; or

(III) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the covered bank holding company.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Appropriate Federal Regulatory Agency, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Appropriate Federal Regulatory Agency under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party’s right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph
(A)), the relief sought by the Appropriate Federal Regulatory Agency pursuant to paragraph (14) may be requested under the laws of such State.

(15) Treatment of claims arising from breach of contracts executed by the Appropriate Federal Regulatory Agency as receiver or conservator.—

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Appropriate Federal Regulatory Agency as receiver or conservator for a covered bank holding company for the breach of an agreement executed or approved by the Appropriate Federal Regulatory Agency after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) Accounting and recordkeeping requirements.—

(A) In general.—The Appropriate Federal Regulatory Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Appropriate Federal Regulatory Agency, maintain a full accounting of each conservatorship, receivership, or other disposition of any covered bank holding company.

(B) Annual accounting or report.—With respect to each conservatorship or receivership to which the Appropriate Federal Regulatory Agency was appointed, the Appropriate Federal Regulatory Agency shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.
(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Appropriate Federal Regulatory Agency upon request to any member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Appropriate Federal Regulatory Agency is appointed as receiver of a covered bank holding company the Appropriate Federal Regulatory Agency may destroy any records of such covered bank holding company which the Appropriate Federal Regulatory Agency, in the Appropriate Federal Regulatory Agency’s discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Appropriate Federal Regulatory Agency may destroy records of a covered bank holding company which are at least 10 years old as of the date on which the Appropriate Federal Regulatory Agency is appointed as the receiver of such company in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered bank holding company, or the receiver for such covered bank holding company under this section, that are proven to
the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States.

(C) Any other general or senior liability of the covered bank holding company (which is not a liability described under subparagraph (D) or (E)).

(D) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (E)).

(E) Any obligation to shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered bank holding company arising as a result of their status as shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered bank holding company.

(2) CREDITORS SIMILARLY SITUATED.—All claimants of a covered bank holding company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Appropriate Federal Regulatory Agency determines that such action is necessary to maximize the value of the assets of the covered bank holding company, to maximize the present value return from the sale or other disposition of the assets of the covered bank holding company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered bank holding company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and
(B) all claimants that are similarly situated under paragraph (1) receive not
less than the amount provided in subsection (d)(2).

(3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured
claims, except to the extent that the security is insufficient to satisfy the claim and then
only with regard to the difference between the claim and the amount realized from the
security.

(4) DEFINITIONS.—As used in this subsection, the term “administrative expenses
of the receiver” includes—

(A) the actual, necessary costs and expenses incurred by the receiver in
preserving the assets of a covered bank holding company or liquidating or
otherwise resolving the affairs of a covered bank holding company for which the
Appropriate Federal Regulatory Agency has been appointed as receiver; and

(B) any obligations that the receiver determines are necessary and
appropriate to facilitate the smooth and orderly liquidation or other resolution of
the covered bank holding company.

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF
CONSERVATOR OR RECEIVER.

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a
conservator or receiver may have, the Appropriate Federal Regulatory Agency as
conservator or receiver for any covered bank holding company may disaffirm or
repudiate any contract or lease—

(A) to which the covered bank holding company is a party;

(B) the performance of which the conservator or receiver, in the
conservator’s or receiver’s discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver
determines, in the conservator’s or receiver’s discretion, will promote the orderly
administration of the covered bank holding company’s affairs.

(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any
covered bank holding company under section 1204 shall determine whether or not to
exercise the rights of repudiation under this subsection within a reasonable period
following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and
paragraphs (4), (5), and (6), the liability of the conservator or receiver for the
disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or
receiver; or

(II) in the case of any contract or agreement referred to in
paragraph (8), the date of the disaffirmance or repudiation of such
contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph
(A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or
(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL

CONTRACTS.—In the case of any qualified financial contract or agreement to

which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or

other reasonable measures of damages utilized in the industries for such

contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (d)

except as otherwise specifically provided in this subsection.

(4) LEASES UNDER WHICH THE COVERED BANK HOLDING COMPANY IS THE

LESSEE.—

(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a

lease under which the covered bank holding company was the lessee, the

conservator or receiver shall not be liable for any damages (other than damages

determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of

such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor

under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the
date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;
(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (d).

(5) LEASES UNDER WHICH THE COVERED BANK HOLDING COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the covered bank holding company under which the covered bank holding company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which
accrue after such date due to the nonperformance of any obligation of the covered bank holding company under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the conservator or receiver repudiates any contract (which meets the requirements of subsection (a)(7)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered bank holding company under
the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered bank holding company for which the Appropriate Federal Regulatory Agency has been appointed
conservator or receiver, any claim of such person for services performed before
the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (a), (b) and
(d); and
(ii) deemed to have arisen as of the date the conservator or receiver
was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO
REPUDIATION.—If, in the case of any contract for services described in
subparagraph (A), the conservator or receiver accepts performance by the other
person before the conservator or receiver makes any determination to exercise the
right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for
the services performed; and
(ii) the amount of such payment shall be treated as an
administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT
REPUDIATION.—The acceptance by any conservator or receiver of services
referred to in subparagraph (B) in connection with a contract described in such
subparagraph shall not affect the right of the conservator or receiver to repudiate
such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and
(10) of this subsection and notwithstanding any other provision of this section
(other than subsection (a)(8)), any other Federal law, or the law of any State, no
person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation,
or acceleration of any qualified financial contract with a covered bank
holding company which arises upon the appointment of the Appropriate
Federal Regulatory Agency as receiver for such covered bank holding
company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other
credit enhancement related to one or more qualified financial contracts
described in clause (i).

(iii) any right to offset or net out any termination value, payment
amount, or other transfer obligation arising under or in connection with 1
or more contracts and agreements described in clause (i), including any
master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(10) shall apply
in the case of any judicial action or proceeding brought against any receiver
referred to in subparagraph (A), or the covered bank holding company for which
such receiver was appointed, by any party to a contract or agreement described in
subparagraph (A)(i) with such company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of
the Revised Statutes of the United States or any other provision of Federal
or State law relating to the avoidance of preferential or fraudulent
transfers, the Appropriate Federal Regulatory Agency, whether acting as such or as conservator or receiver of a covered bank holding company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered bank holding company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered bank holding company if the Appropriate Federal Regulatory Agency determines that the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or any conservator or receiver appointed for such company.

(D) CERTAIN CONTACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Appropriate Federal Regulatory Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of
deposit, or mortgage loans or interests therein (including any
interest therein or based on the value thereof) or any option on any
of the foregoing, including any option to purchase or sell any such
security, certificate of deposit, mortgage loan, interest, group or
index, or option, and including any repurchase or reverse
repurchase transaction on any such security, certificate of deposit,
mortgage loan, interest, group or index, or option (whether or not
such repurchase or reverse repurchase transaction is a “repurchase
agreement,” as defined in clause (v));

(II) does not include any purchase, sale, or repurchase
obligation under a participation in a commercial mortgage loan
unless the Appropriate Federal Regulatory Agency determines by
regulation, resolution, or order to include any such agreement
within the meaning of such term;

(III) means any option entered into on a national securities
exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to
any securities clearing agency of any settlement of cash, securities,
certificates of deposit, mortgage loans or interests therein, group or
index of securities, certificates of deposit or mortgage loans or
interests therein (including any interest therein or based on the
value thereof) or option on any of the foregoing, including any
option to purchase or sell any such security, certificate of deposit,
mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master
agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade
that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this
(iv) **FORWARD CONTRACT.**—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward
contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (which for these purpose shall mean a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development as determined by regulation or order adopted by the Federal Reserve Board) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of
deposit, eligible bankers’ acceptances, securities, mortgage loans,
or interests with a simultaneous agreement by such transferee to
transfer to the transferor thereof certificates of deposit, eligible
bankers’ acceptances, securities, mortgage loans, or interests as
described above, at a date certain not later than 1 year after such
transfers or on demand, against the transfer of funds, or any other
similar agreement;

(II) does not include any repurchase obligation under a
participation in a commercial mortgage loan unless the
appropriate Federal Regulatory Agency determines by regulation,
resolution, or order to include any such participation within the
meaning of such term;

(III) means any combination of agreements or transactions
referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or
transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an
agreement or transaction referred to in subclause (I), (III), or (IV),
together with all supplements to any such master agreement,
without regard to whether the master agreement provides for an
agreement or transaction that is not a repurchase agreement under
this clause, except that the master agreement shall be considered to
be a repurchase agreement under this subclause only with respect
to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;
(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap
agreement under this clause only with respect to each agreement or
transaction under the master agreement that is referred to in
subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit
enhancement related to any agreements or transactions referred to
in subclause (I), (II), (III), (IV), or (V), including any guarantee or
reimbursement obligation in connection with any agreement or
transaction referred to in any such subclause.

(vii) DEFINITIONS RELATING TO DEFAULT.— When used in this
paragraph and paragraph (10)—

(I) The term “default” shall mean, with respect to a covered
bank holding company, any adjudication or other official
determination by any court of competent jurisdiction, or other
public authority pursuant to which a conservator, receiver, or other
legal custodian is appointed; and

(II) The term “in danger of default” shall mean a covered
bank holding company with respect to which the Appropriate
Federal Regulatory Agency or appropriate State authority has
determined that—

(aa) in the opinion of the Appropriate Federal
Regulatory Agency or such authority—

(i) the covered bank holding company is not
likely to be able to pay its obligations in the normal
course of business; and

(ii) there is no reasonable prospect that the
covered bank holding company will be able to pay
such obligations without Federal assistance; or

(bb) in the opinion of the Appropriate Federal
Regulatory Agency or such authority—

(i) the covered bank holding company has
incurred or is likely to incur losses that will deplete
all or substantially all of its capital; and

(ii) there is no reasonable prospect that the
capital will be replenished without Federal
assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—

Any master agreement for any contract or agreement described in any
preceding clause of this subparagraph (or any master agreement for such
master agreement or agreements), together with all supplements to such
master agreement, shall be treated as a single agreement and a single
qualified financial contact. If a master agreement contains provisions
relating to agreements or transactions that are not themselves qualified
financial contracts, the master agreement shall be deemed to be a qualified
financial contract only with respect to those transactions that are
themselves qualified financial contracts.
(ix) **TRANSFER.**—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the covered bank holding company’s equity of redemption.

(x) **PERSON.**—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) **CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.**—Notwithstanding any other provision of this section (other than paragraph (10) of this subsection and subsection (a)(7) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered bank holding company in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.
(F) CLARIFICATION.—No provision of law shall be construed as limiting
the right or power of the Appropriate Federal Regulatory Agency, or authorizing
any court or agency to limit or delay, in any manner, the right or power of the
Appropriate Federal Regulatory Agency to transfer any qualified financial
contract in accordance with paragraphs (9) and (10) of this subsection or to
disaffirm or repudiate any such contract in accordance with subsection (c)(1) of
this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs
(A) and (E) and sections 403 and 404 of the Federal Deposit Insurance
Corporation Improvement Act of 1991, no walkaway clause shall be
enforceable in a qualified financial contract of a covered bank holding
company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of
a qualified financial contract referred to in clause (i), any payment or
delivery obligations otherwise due from a party pursuant to the qualified
financial contract shall be suspended from the time the receiver is
appointed until the earlier of—

(I) the time such party receives notice that such contract has
been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following
the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this
subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of a covered bank holding company that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such covered bank holding company, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) RECORDKEEPING.—The Appropriate Federal Regulatory Agency, in consultation with the Federal Reserve Board, may prescribe regulations requiring that the covered bank holding company maintain such records with respect to qualified financial contracts (including market valuations) as the Appropriate Federal Regulatory Agency determines to be necessary or appropriate in order to assist the conservator or receiver of the covered bank holding company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered bank holding company in default which includes any qualified financial contract, the conservator or receiver for such covered bank holding company shall
either—

(i) transfer to one financial institution, other than a financial
in institution for which a conservator, receiver, trustee in bankruptcy, or
other legal custodian has been appointed or which is otherwise the subject
of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or
any affiliate of such person and the covered bank holding company
in default;

(II) all claims of such person or any affiliate of such person
against such covered bank holding company under any such
contract (other than any claim which, under the terms of any such
contract, is subordinated to the claims of general unsecured
creditors of such company);

(III) all claims of such covered bank holding company
against such person or any affiliate of such person under any such
contract; and

(IV) all property securing or any other credit enhancement
for any contract described in subclause (I) or any claim described
in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims,
property or other credit enhancement referred to in clause (i) (with respect
to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR
AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the covered bank holding company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, or any other institution determined by the Appropriate Federal Regulatory Agency by regulation to be a financial institution, and the term ‘clearing organization’ has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.
(10) **Notification of Transfer.**—

(A) IN GENERAL.—If—

(i) the conservator or receiver for a covered bank holding company in default or in danger of default transfers any assets and liabilities of the covered bank holding company; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered bank holding company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered bank holding company (or the insolvency or financial condition of the covered bank holding company for which the receiver has been appointed)—

   (I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

   (II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).
(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a covered bank holding company may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 of Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment under this section of a conservator for the covered bank holding company (or the insolvency or financial condition of the covered bank holding company for which the conservator has been appointed).

(iii) NOTICE.—For purposes of this paragraph, the receiver or conservator for a covered bank holding company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered bank holding company if the receiver or conservator has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE BANK HOLDING COMPANY.—For purposes of paragraph (9), a bridge bank holding company shall not be considered to be a covered bank holding company for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New
York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a covered bank holding company is a party, the conservator or receiver for such covered bank holding company shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered bank holding company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered bank holding company except where such an interest is taken in contemplation of the company’s insolvency or with the intent to hinder, delay, or defraud the company or the creditors of such company; or

(B) legally enforceable interest in customer property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director’s or officer’s liability insurance contract or a financial institution bond, entered into by the covered bank holding company notwithstanding any provision of the contract providing for termination, default,
acceleration, or exercise of rights upon, or solely by reason of, insolvency or the
appointment of or the exercise of rights or powers by a conservator or receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may
be construed as impairing or affecting any right of the conservator or receiver to
enforce or recover under a director’s or officer’s liability insurance contract or
financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section, no
person may exercise any right or power to terminate, accelerate, or declare
a default under any contract to which the covered bank holding company
is a party, or to obtain possession of or exercise control over any property
of the covered bank holding company or affect any contractual rights of
the covered bank holding company, without the consent of the conservator
or receiver, as appropriate, of the covered bank holding company during
the 45-day period beginning on the date of the appointment of the
conservator, or during the 90-day period beginning on the date of the
appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph
shall apply to a director or officer liability insurance contract or a financial
institution bond, to the rights of parties to certain qualified financial
contracts pursuant to paragraph (8), or to the rights of parties to netting
contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance
Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall
be construed as permitting the conservator or receiver to fail to comply
with otherwise enforceable provisions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS, THE SECRETARY, AND THE
APPROPRIATE FEDERAL REGULATORY AGENCY SECURITY INTEREST.—No provision of this
subsection shall apply with respect to—

(A) any extension of credit from any Federal Reserve bank, the Secretary,
or the Appropriate Federal Regulatory Agency to any covered bank holding
company; or

(B) any security interest in the assets of the covered bank holding
company securing any such extension of credit.

(15) SAVINGS CLAUSE. —The meanings of terms used in this subsection are
applicable for purposes of this subsection only, and shall not be construed or applied so
as to challenge or affect the characterization, definition, or treatment of any similar terms
under any other statute, regulation, or rule, including, but not limited, to the
Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the
securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act
of 1934), and the Commodity Exchange Act.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law
of any State, and regardless of the method which the Appropriate Federal Regulatory
Agency determines to utilize with respect to a covered bank holding company, including
transactions authorized under subsection (h), this subsection shall govern the rights of the
creditors of such covered bank holding company.
(2) MAXIMUM LIABILITY.—The maximum liability of the Appropriate Federal Regulatory Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered bank holding company for which such receiver is appointed shall equal the amount such claimant would have received if—

(A) a determination had not been made under section 1203(b) with respect to the covered bank holding company; and

(B) the covered bank holding company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including but not limited to a case initiated by the Securities Investor Protection Corporation with respect to a bank holding company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered bank holding company if the Appropriate Federal Regulatory Agency determines that such payments or credits are necessary or appropriate to—

(i) minimize losses to the receiver from the resolution of the covered bank holding company under this section; or

(ii) prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Appropriate Federal Regulatory Agency
may make payments or credit amounts under subparagraph (A) directly to the
claimants or may make such payments or credit such amounts to a company other
than a covered bank holding company or a bridge bank holding company
established with respect thereto in order to induce such other company to accept
liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request
of the conservator or receiver appointed for a covered bank holding company under this section,
no court may take any action to restrain or affect the exercise of powers or functions of the
conservator or receiver hereunder.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered bank holding company may
be held personally liable for monetary damages in any civil action described in paragraph
(2) by, on behalf of, or at the request or direction of the Appropriate Federal Regulatory
Agency, which action is prosecuted wholly or partially for the benefit of the Appropriate
Federal Regulatory Agency —

(A) acting as conservator or receiver of such covered bank holding
company;

(B) acting based upon a suit, claim, or cause of action purchased from,
assigned by, or otherwise conveyed by such receiver or conservator; or

(C) acting based upon a suit, claim, or cause of action purchased from,
assigned by, or otherwise conveyed in whole or in part by a covered bank holding
company or its affiliate in connection with assistance provided under section
1204.
(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Appropriate Federal Regulatory Agency under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a covered bank holding company’s director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a covered bank holding company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any covered bank holding company’s assets shall include principal losses and appropriate interest.

(h) BRIDGE BANK HOLDING COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Appropriate Federal Regulatory Agency, as receiver of one or more covered bank holding companies or in anticipation of being appointed receiver of one or more bank holding companies, may organize one or more bridge bank holding companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge bank holding company under subparagraph (A) with respect to a covered bank holding company, such bridge bank holding company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business) of such covered bank holding company as the Appropriate Federal Regulatory Agency may, in its discretion, determine
to be appropriate;

(ii) purchase such assets (including assets associated with any trust
or custody business) of such covered bank holding company as the
Appropriate Federal Regulatory Agency may, in its discretion, determine
to be appropriate; and

(iii) perform any other temporary function which the Appropriate
Federal Regulatory Agency may, in its discretion, prescribe in accordance
with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—If the Appropriate Federal Regulatory Agency is
appointed as receiver for a bank holding company, the Appropriate Federal
Regulatory Agency may grant a Federal charter to and approve articles of
association for one or more bridge bank holding company or companies with
respect to such bank holding company which shall, by operation of law and
immediately upon issuance of its charter and approval of its articles of
association, be established and operate in accordance with, and subject to, such
charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge bank holding
company shall be under the management of a board of directors appointed by the
Appropriate Federal Regulatory Agency.

(C) ARTICLES OF ASSOCIATION.—The articles of association and
organization certificate of a bridge bank holding company shall have such terms
as the Appropriate Federal Regulatory Agency may provide, and shall be
executed by such representatives as the Appropriate Federal Regulatory Agency may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.— Subject to and in accordance with the provisions of this subsection, the Appropriate Federal Regulatory Agency shall—

(i) establish the terms of the charter of a bridge bank holding company and the rights, powers, authorities and privileges of a bridge bank holding company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including, but not limited to, the bylaws and the number of directors of the board of directors) and operations of the bridge bank holding company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED BANK HOLDING COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, the Appropriate Federal Regulatory Agency may provide for a bridge bank holding company to succeed to and assume any rights, powers, authorities or privileges of the covered bank holding company with respect to which the bridge bank holding company was established and, upon such determination by the Appropriate Federal Regulatory Agency, the bridge bank holding company shall immediately and by operation of law succeed to and assume such rights, powers, authorities and privileges.
(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge bank holding company of rights, powers, authorities or privileges of a covered bank holding company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Appropriate Federal Regulatory Agency and consistent with this section and any rules, regulations or directives issued by the Appropriate Federal Regulatory Agency under this section, a bridge bank holding company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered bank holding company with respect to which the bridge bank holding company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge bank holding company may, if permitted by the Appropriate Federal Regulatory Agency, operate without any capital or surplus, or with such capital or surplus as the Appropriate Federal Regulatory Agency may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY APPROPRIATE FEDERAL REGULATORY
AGENCY REQUIRED.—The Appropriate Federal Regulatory Agency is not required to pay capital into a bridge bank holding company or to issue any capital stock on behalf of a bridge bank holding company established under this subsection.

(iii) AUTHORITY.—If the Appropriate Federal Regulatory Agency determines that such action is advisable, the Appropriate Federal Regulatory Agency may cause capital stock or other securities of a bridge bank holding company established with respect to a covered bank holding company to be issued and offered for sale in such amounts and on such terms and conditions as the Appropriate Federal Regulatory Agency may, in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED BANK HOLDING COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

(A) a bridge bank holding company shall assume, acquire, or succeed to the assets or liabilities of a covered bank holding company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Appropriate Federal Regulatory Agency to the bridge bank holding company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge bank holding company shall not assume, acquire, or succeed to any obligation that a covered bank holding company for which a receiver has been appointed may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered bank holding company.
company that arises as a result of the status of that person having an equity claim in the covered bank holding company.

(4) BRIDGE BANK HOLDING COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge bank holding company shall be treated as a covered bank holding company in default at such times and for such purposes as the Appropriate Federal Regulatory Agency may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Appropriate Federal Regulatory Agency, as receiver, may transfer any assets and liabilities of a covered bank holding company (including any assets or liabilities associated with any trust or custody business) to one or more bridge bank holding companies in accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge bank holding company with respect to a covered bank holding company, the Appropriate Federal Regulatory Agency, as receiver, may transfer any assets and liabilities of such covered bank holding company as the Appropriate Federal Regulatory Agency may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered bank holding company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a
covered bank holding company to a bridge bank holding company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Appropriate Federal Regulatory Agency shall treat all creditors of a covered bank holding company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Appropriate Federal Regulatory Agency under this subsection to transfer any assets or liabilities of the covered bank holding company to one or more bridge bank holding companies established with respect to such covered bank holding company, except that the Appropriate Federal Regulatory Agency may take actions (including making payments) that do not comply with this subparagraph, if—

(i) the Appropriate Federal Regulatory Agency determines that such actions are necessary to maximize the value of the assets of the covered bank holding company, to maximize the present value return from the sale or other disposition of the assets of the covered bank holding company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered bank holding company, or to contain or address serious adverse effects to financial stability or the U.S. economy; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided in subsection (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other
provision of law, the aggregate amount of liabilities of a covered bank holding
company that are transferred to, or assumed by, a bridge bank holding company
from a covered bank holding company may not exceed the aggregate amount of
the assets of the covered bank holding company that are transferred to, or
purchased by, the bridge bank holding company from the covered bank holding
company.

(6) Stay of Judicial Action.—Any judicial action to which a bridge bank
holding company becomes a party by virtue of its acquisition of any assets or assumption
of any liabilities of a covered bank holding company shall be stayed from further
proceedings for a period of up to 45 days (or such longer period as may be agreed to upon
the consent of all parties) at the request of the bridge bank holding company.

(7) Agreements Against Interest of the Bridge Bank Holding Company.—
No agreement that tends to diminish or defeat the interest of the bridge bank holding
company in any asset of a covered bank holding company acquired by the bridge bank
holding company shall be valid against the bridge bank holding company unless such
agreement is in writing and executed by an authorized officer or representative of the
covered bank holding company.

(8) No Federal Status.—

(A) Agency Status.—A bridge bank holding company is not an agency,
establishment, or instrumentality of the United States.

(B) Employee Status.—Representatives for purposes of paragraph
(1)(B), directors, officers, employees, or agents of a bridge bank holding company
are not, solely by virtue of service in any such capacity, officers or employees of
the United States. Any employee of the Appropriate Federal Regulatory Agency or of any Federal instrumentality who serves at the request of the Appropriate Federal Regulatory Agency as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge bank holding company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge bank holding company in addition to such salary or benefits as are obtained through employment with the Appropriate Federal Regulatory Agency or such Federal instrumentality.

(9) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge bank holding company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or sale of a bridge bank holding company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the
Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Federal Reserve Board, has found that the Appropriate Federal Regulatory Agency must act immediately to prevent the probable failure of the covered bank holding company involved, the approvals and filings referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Appropriate Federal Regulatory Agency.

(11) DURATION OF BRIDGE BANK HOLDING COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge bank holding company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Appropriate Federal Regulatory Agency may, in its discretion, extend the status of the bridge bank holding company as such for 3 additional 1-year periods.

(12) TERMINATION OF BRIDGE BANK HOLDING COMPANY STATUS.—The status of any bridge bank holding company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge bank holding company with
a company that is not a bridge bank holding company;

(B) at the election of the Appropriate Federal Regulatory Agency, the sale of a majority of the capital stock of the bridge bank holding company to a company other than the Appropriate Federal Regulatory Agency and other than another bridge bank holding company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge bank holding company to a person other than the Appropriate Federal Regulatory Agency and other than another bridge bank holding company;

(D) at the election of the Appropriate Federal Regulatory Agency, either the assumption of all or substantially all of the liabilities of the bridge bank holding company by a company that is not a bridge bank holding company, or the acquisition of all or substantially all of the assets of the bridge bank holding company by a company that is not a bridge bank holding company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge bank holding company as provided in paragraph (14).

(13) Effect of termination events.—

(A) Merger or consolidation.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge bank holding company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge bank holding company in
accordance with paragraph (2)(F), and the Appropriate Federal Regulatory
Agency shall be treated as the sole shareholder thereof, notwithstanding any other
provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the
capital stock of the bridge bank holding company as provided in paragraph
(12)(B), the Appropriate Federal Regulatory Agency may amend the charter of
the bridge bank holding company to reflect the termination of the status of the
bridge bank holding company as such, whereupon the company shall have all of
the rights, powers, and privileges under its constituent documents and applicable
State or Federal law. In connection therewith, the Appropriate Federal
Regulatory Agency may take such steps as may be necessary or convenient to
reincorporate the bridge bank holding company under the laws of a State and,
notwithstanding any provisions of State or Federal law, such state-chartered
corporation shall be deemed to succeed by operation of law to such rights, titles,
powers and interests of the bridge bank holding company as the Appropriate
Federal Regulatory Agency may provide, with the same effect as if the bridge
bank holding company had merged with the State-chartered corporation under
provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the
capital stock of a bridge bank holding company as provided in paragraph (12)(C),
the company shall have all of the rights, powers, and privileges under its
constituent documents and applicable State or Federal law. In connection
therewith, the Appropriate Federal Regulatory Agency may take such steps as
may be necessary or convenient to reincorporate the bridge bank holding
company under the laws of a State and, notwithstanding any provisions of State or
Federal law, the state-chartered corporation shall be deemed to succeed by
operation of law to such rights, titles, powers and interests of the bridge bank
holding company as the Appropriate Federal Regulatory Agency may provide,
with the same effect as if the bridge bank holding company had merged with the
State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the
assumption of all or substantially all of the liabilities of the bridge bank holding
company, or the sale of all or substantially all of the assets of the bridge bank
holding company, as provided in paragraph (12)(D), at the election of the
Appropriate Federal Regulatory Agency the bridge bank holding company may
retain its status as such for the period provided in paragraph (11) or may be
dissolved at the election of the Appropriate Federal Regulatory Agency.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a
transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the
charter of the resulting company shall be amended to reflect the termination of
bridge bank holding company status, if appropriate.

(14) DISSOLUTION OF BRIDGE BANK HOLDING COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of State or
Federal law, if a bridge bank holding company’s status as such has not previously
been terminated by the occurrence of an event specified in subparagraph (A), (B),
(C), or (D) of paragraph (12)—
(i) the Appropriate Federal Regulatory Agency may, in its discretion, dissolve the bridge bank holding company in accordance with this paragraph at any time; and

(ii) the Appropriate Federal Regulatory Agency shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge bank holding company was chartered, or any extension thereof, as provided in paragraph (11).

(B) PROCEDURES.—The Appropriate Federal Regulatory Agency shall remain the receiver of a bridge bank holding company for the purpose of dissolving the bridge bank holding company. The Appropriate Federal Regulatory Agency as such receiver shall wind up the affairs of the bridge bank holding company in conformity with the provisions of law relating to the liquidation of covered bank holding companies. With respect to any such bridge bank holding company, the Appropriate Federal Regulatory Agency as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of a covered bank holding company and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges the Appropriate Federal Regulatory Agency shall not be subject to the direction or supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge bank holding company may obtain unsecured
credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge bank holding company is unable to obtain unsecured credit or issue unsecured debt, the Appropriate Federal Regulatory Agency may authorize the obtaining of credit or the issuance of debt by the bridge bank holding company—

(i) with priority over any or all of the obligations of the bridge bank holding company;

(ii) secured by a lien on property of the bridge bank holding company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge bank holding company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Appropriate Federal Regulatory Agency, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge bank holding company that is secured by a senior or equal lien on property of the bridge bank holding company that is subject to a lien only if—

(I) the bridge bank holding company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) BURDEN OF PROOF.—In any hearing under this subsection, the
Appropriate Federal Regulatory Agency has the burden of proof on the issue of adequate protection.

(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—Whenever the Appropriate Federal Regulatory Agency has been appointed as conservator or receiver for a covered bank holding company, the Federal Reserve Board and the company’s primary federal regulatory agency, if any, shall each make all records relating to the company available to the conservator or receiver which may be used by the conservator or receiver in any manner the conservator or receiver determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Appropriate Federal Regulatory Agency against a covered bank holding company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered bank holding company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of
any case brought by the Appropriate Federal Regulatory Agency against a covered bank holding company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered bank holding company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Appropriate Federal Regulatory Agency, as conservator or receiver of any covered bank holding company and for purposes of carrying out any power, authority, or duty with respect to a covered bank holding company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered bank holding company were an insured depository institution, the Appropriate Federal Regulatory Agency were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Appropriate Federal Regulatory Agency may not enter into any agreement or approve any protective order which prohibits the Appropriate Federal Regulatory Agency from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by
the Appropriate Federal Regulatory Agency in its capacity as conservator or receiver for a
covered bank holding company.

(m) LIQUIDATION OF CERTAIN COVERED BANK HOLDING COMPANIES OR BRIDGE BANK
HOLDING COMPANIES.—Notwithstanding any other provision of law (other than a conflicting
provision of this section), the Appropriate Federal Regulatory Agency, in connection with the
liquidation of any covered bank holding company or bridge bank holding company with respect
to which the Appropriate Federal Regulatory Agency has been appointed as receiver, shall—

(1) in the case of any covered bank holding company or bridge bank holding
company that is or has a subsidiary that is a stockbroker (as that term is defined in section
101 of title 11 of the United States Code) but is not a member of the Securities Investor
Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of
the United States Code in respect of the distribution to any “customer” of all “customer
name securities” and “customer property” (as such terms are defined in section 741 of
such title 11) as if such covered bank holding company or bridge bank holding company
were a debtor for purposes of such subchapter; or

(2) in the case of any covered bank holding company or bridge bank holding
company that is a commodity broker (as that term is defined in section 101 of title 11 of
the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of
the United States Code in respect of the distribution to any “customer” of all “customer
property” (as such terms are defined in section 761 of such title 11) as if such covered
bank holding company or bridge bank holding company were a debtor for purposes of
such subchapter.

(n) BANK HOLDING COMPANY FUND.—
(1) ESTABLISHMENT.—There is established in the Treasury a separate fund called the Bank Holding Company Fund, which shall be available without further appropriation for the cost of actions authorized by this title upon a determination made under section 1203(b) to—

(A) the Appropriate Federal Regulatory Agency as conservator or receiver under section 1204; and

(B) the Corporation,
to carry out the authorities contained in this title, including the payment of administrative expenses and, for purposes of subparagraph (B), the Corporation’s payment of principal and interest on obligations issued under paragraph (3) and the exercise of authorities under section 1204.

(2) PROCEEDS.—Amounts received by the Appropriate Federal Regulatory Agency and the Corporation (including amounts borrowed under paragraph (3) and assessments received under subsection (o), but excluding amounts received by any covered bank holding company when the Appropriate Federal Regulatory Agency is acting in its capacity as conservator or receiver for such company, and excluding amounts credited to the appropriate financing account as a means of financing credit activity, as applicable) shall be deposited into the Fund, subject to apportionment.

(3) CAPITALIZATION OF FUND.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—In order to capitalize the Fund upon the Secretary making the determination provided for in section 1203(b), the Corporation is authorized to issue obligations to the Secretary.
(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, in the Secretary’s discretion and under such terms and conditions that the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be covered into the Treasury as miscellaneous receipts.

(4) INVESTMENT.—The Corporation may request the Secretary to invest such portion of the Fund as is not, in the Corporation’s judgment, required to meet the current
needs of the Fund. Such investments shall be made by the Secretary in public debt
securities, with maturities suitable to the needs of the Fund as determined by the
Corporation, and bearing interest at a rate determined by the Secretary, taking into
consideration current market yields on outstanding marketable obligations of the United
States of comparable maturity.

(o) RISK-BASED ASSESSMENTS.—

(1) RECOVERY OF EXPENDED FUNDS FROM BANK HOLDING COMPANIES.—The
Corporation shall take steps to recover the amount of funds expended out of the Fund
under subsection (n) and which have not otherwise been recouped. Such steps shall
include one or more risk-based assessments on bank holding companies based on their
total liabilities in such amount and manner, and subject to such terms and conditions as
the Corporation determines, by regulation, are necessary to pay in full the obligations
issued by Corporation to the Secretary, within 60 months from the date of the Secretary’s
determination under section 1203(b).

(2) ASSESSMENT THRESHOLD.—The Corporation shall assess each bank holding
company whose non-Corporation assessed liabilities on a consolidated basis are greater
than $10 billion as of the end of the previous calendar quarter.

(3) BASELINE FOR ASSESSMENTS.—The Corporation shall determine the amount of
each risk-based assessment on a bank holding company by using as a baseline the
difference between:

(A) the total balance-sheet liabilities of the bank holding company as of
the end of the previous calendar quarter; and

(B) the sum of:
(i) $10,000,000,000; and

(ii) the amount of any liabilities of the bank holding company or any subsidiary of the bank holding company, as of the end of the previous calendar quarter, that form the basis of assessments imposed by the Corporation under section 7 of the Federal Deposit Insurance Act (12 U.S.C. § 1817).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1), the Corporation may differentiate among bank holding companies by taking into consideration the following—

(A) different categories and concentrations of assets;

(B) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent;

(C) leverage;

(D) size, complexity, risk profile, and interconnectedness to the financial system;

(E) the threat each poses to the stability of the financial system; and

(F) any other considerations that the Corporation deems appropriate.

(5) ASSESSMENT DEDUCTION.—A bank holding company may deduct from its assessment an amount equal to the amount that it or any subsidiary paid to any State insurance guarantee fund association due to conservation, rehabilitation, or liquidation of a covered bank holding company or any subsidiary of the covered bank holding company.

(6) COLLECTION OF INFORMATION.—The Corporation may impose on bank
holding companies described in paragraph (2) such collection of information
requirements that the Corporation deems necessary to carry out this subsection after a
determination under section 1203(b).

(7) RULEMAKING—The Corporation shall, in consultation with the Federal
Reserve Board, prescribe regulations to carry out this subsection.

(p) NO FEDERAL STATUS.—

(1) AGENCY STATUS.—A covered bank holding company (or any covered
subsidiary thereof) that receives assistance, is placed into conservatorship or receivership,
or both, under section 1204 is not a department, agency, or instrumentality of the United
States for purposes of statutes that confer powers on or impose obligations on
government entities.

(2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or
agents of a covered bank holding company that is placed into conservatorship or
receivership are not, solely by virtue of service in any such capacity, officers or
employees of the United States. Any employee of the Appropriate Federal Regulatory
Agency, acting as conservator or receiver, or of any Federal agency who serves at the
request of the conservator or receiver as an interim director, director, officer, employee,
or agent of a covered bank holding company that is placed into conservatorship or
receivership shall not—

(A) solely by virtue of service in any such capacity lose any existing status

as an officer or employee of the United States for purposes of title 5, United
States Code, or any other provision of law, or;

(B) receive any salary or benefits for service in any such capacity with
respect to a covered bank holding company that is placed into conservatorship or
receivership in addition to such salary or benefits as are obtained through
employment with the Appropriate Federal Regulatory Agency or other Federal
agency.

SEC. 1210. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF
ASSETS FROM CONSERVATOR, RECEIVER, OR LIQUIDATING
AGENT.

(a) IN GENERAL.—Section 1032 of title 18, United States Code, is amended in paragraph
(1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting
immediately thereafter “or the Appropriate Federal Regulatory Agency, as defined in section
1202 of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009
(__U.S.C. § ___(1)(A))”,.

(b) CONFORMING CHANGE.—The title of section 1032 of title 18, United States Code, is
amended by deleting “of financial institution”.

SEC. 1211. MISCELLANEOUS PROVISIONS.

(a) BANKRUPTCY CODE AMENDMENTS.—Section 109(b)(2) of title 11 of the United States
Code is amended by adding “covered bank holding company” as that term is defined in section
1202(6) of the Resolution Authority for Large, Interconnected Financial Companies Act of
2009,” after a “domestic insurance company”.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT.—Section 403(a) of
the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is
amended by inserting “section 1209(c) of the Resolution Authority for Large, Interconnected
Financial Companies Act of 2009, section 1367 of the Federal Housing Enterprises Financial
TITLE XIII—ADDITIONAL IMPROVEMENTS

FOR FINANCIAL CRISIS MANAGEMENT

SEC. 1201. AMENDMENT TO SECTION 13 OF THE FEDERAL RESERVE ACT.

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended in the third paragraph, relating to the Federal Reserve’s emergency lending authority, by inserting after “five members,” the following: “and upon the prior written approval of the Secretary of the Treasury,”.