

1 **[DISCUSSION DRAFT]**

2 OCTOBER 27, 2009

3
4 **TITLE I—FINANCIAL STABILITY**
5 **IMPROVEMENT**

6
7 **SEC. 1. SHORT TITLE.**

8 This title may be cited as the “Financial Stability Improvement Act of 2009.”

9 **SEC. 2. DEFINITIONS.**

10 For purposes of this Act, the following definitions apply:

11 (1) “Board” means the Board of Governors of the Federal Reserve System.

12 (2) “Council” means the Financial Services Oversight Council established under section
13 1001 of this Act.

14 (3) “Federal financial regulatory agency” means any agency that has a voting member of
15 the Council as set forth in section 1001(b)(1).

16 (4) “Financial company” means a company or other entity—

17 (A) that is—

18 (i) incorporated or organized under the laws of the United States or any
19 State, territory, or possession of the United States, the District of Columbia,
20 Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands,
21 Guam, American Samoa, or the United States Virgin Islands;

22 (ii) a Federal or State branch or agency of a foreign bank as such terms are
23 defined in the International Banking Act of 1978 (12 U.S.C. 3101(b)); or

1 (iii) a United States affiliate or other United States operating entity of a
2 company that is incorporated or organized in a country other than the United
3 States; and

4 (B) that is, in whole or in part, directly or indirectly, engaged in financial
5 activities.

6 (5) “Identified financial holding company” means a financial company that the Council
7 has identified for heightened prudential standards under subtitle B of this Act, unless such
8 financial company is required to establish an intermediate holding company under section 6 of
9 the Bank Holding Company Act, in which case the “identified financial holding company” is
10 such section 6 holding company through which the financial company is required to conduct its
11 financial activities.

12 (6) “Primary financial regulatory agency” means the following—

13 (A) The Office of the Comptroller of the Currency, with respect to any national
14 bank, any Federal branch or Federal agency of a foreign bank, and, after the date on
15 which the functions of the Office of Thrift Supervision are transferred under subtitle C, a
16 Federal savings association.

17 (B) The Board, with respect to—

18 (i) a State member bank;

19 (ii) any bank holding company and any subsidiary of such company (as
20 such terms are defined in the Bank Holding Company Act), other than a
21 subsidiary that is described in any other subparagraph of this paragraph to the
22 extent that the subsidiary is engaged in an activity described in such
23 subparagraph;

1 (iii) any identified financial holding company and any subsidiary (as such
2 term is defined in the Bank Holding Company Act) of such company, other than a
3 subsidiary that is described in any other subparagraph of this paragraph to the
4 extent that the subsidiary is engaged in an activity described in such
5 subparagraph;

6 (iv) after the date on which the functions of the Office of Thrift
7 Supervision are transferred under subtitle C, any savings and loan holding
8 company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) and
9 any subsidiary (as such term is defined in the Bank Holding Company Act) of a
10 such company, other than a subsidiary that is described in any other subparagraph
11 of this paragraph, to the extent that the subsidiary is engaged in an activity
12 described in such subparagraph;

13 (v) any organization organized and operated under section 25 or 25A of
14 the Federal Reserve Act (12 U.S.C. § 601 et seq. or § 611 et seq.); and

15 (vi) any foreign bank or company that is treated as a bank holding
16 company under subsection (a) of section 8 of the International Banking Act of
17 1978 applies and any subsidiary (other than a bank or other subsidiary that is
18 described in any other subparagraph of this paragraph) of any such foreign bank
19 or company.

20 (C) The Federal Deposit Insurance Corporation, with respect to a State
21 nonmember bank, any insured State branch of a foreign bank (as such terms are defined
22 in section 3 of the Federal Deposit Insurance Act), and, after the date on which the

1 functions of the Office of Thrift Supervision are transferred under subtitle C, any State
2 savings association.

3 (D) The National Credit Union Administration, with respect to any insured credit
4 union under the Federal Credit Union Act (12 U.S.C. § 1751 et seq.).

5 (E) The Securities and Exchange Commission, with respect to—

6 (i) any broker or dealer registered with the Securities and Exchange
7 Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.);

8 (ii) any investment company registered with the Securities and Exchange
9 Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et
10 seq.);

11 (iii) any investment adviser registered with the Securities and Exchange
12 Commission under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et
13 seq.) with respect to the investment advisory activities of such company and
14 activities incidental to such advisory activities;

15 and

16 (v) any clearing agency registered with the Securities and Exchange
17 Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.).

18 (F) The Commodity Futures Trading Commission, with respect to

19 (i) any futures commission merchant, any commodity trading adviser, and any
20 commodity pool operator registered with the Commodity Futures Trading
21 Commission under the Commodity Exchange Act (7 U.S.C. § 1 et seq.) with
22 respect to the commodities activities of such entity and activities incidental to
23 such commodities activities; and

1 (G) The Federal Housing Finance Agency with respect to the Federal National
2 Mortgage Association or the Federal Home Loan Mortgage Corporation, and the Federal
3 home loan banks.

4 (H) The State insurance authority of the state in which an insurance company is
5 domiciled, with respect to the insurance activities and activities incidental to such
6 insurance activities of an insurance company that is subject to supervision by the State
7 insurance authority under State insurance law.

8 (I) The Office of Thrift Supervision, with respect to any Federal savings
9 association, State savings association, or savings and loan holding company, until the
10 date on which the functions of the Office of Thrift Supervision are transferred under
11 subtitle C.

12 (7) TERMS DEFINED IN OTHER LAWS.—

13 (A) AFFILIATE.—The term “affiliate” has the meaning given such term in section
14 2(k) of the Bank Holding Company Act of 1956.

15 (B) STATE MEMBER BANK, STATE NONMEMBER BANK.—The terms “State
16 member bank” and “State nonmember bank” have the same meanings as in subsections (d)(2)
17 and (e)(2), respectively, of section 3 of the Federal Deposit Insurance Act.

18 **SUBTITLE A – THE FINANCIAL SERVICES OVERSIGHT** 19 **COUNCIL**

20 **SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.**

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

24 (b) MEMBERSHIP.— The Council shall consist of the following:

1 (1) VOTING MEMBERS.—Voting members, who shall each have one vote on the
2 Council, as follows:

3 (A) The Secretary of the Treasury, who shall serve as the Chairman of the
4 Council;

5 (B) The Chairman of the Board of Governors of the Federal Reserve
6 System;

7 (C) The Comptroller of the Currency.

8 (D) The Director of the Office of Thrift Supervision, until the functions of
9 the Director of the Office of Thrift Supervision are transferred to pursuant to
10 subtitle C of this title;

11 (E) The Chairman of the Securities and Exchange Commission.

12 (F) The Chairman of the Commodity Futures Trading Commission.

13 (G) The Chairperson of the Federal Deposit Insurance Corporation.

14 (H) The Director of the Federal Housing Finance Agency.

15 (I) The Chairman of the National Credit Union Administration; and

16 (2) NONVOTING MEMBERS.— Nonvoting members, who shall serve in an
17 advisory capacity:

18 (A) A state insurance commissioner, to be designated by a selection
19 process determined by the state insurance commissioners, provided that the term
20 for which a state insurance commissioner may serve shall last no more than the 2-
21 year period beginning on the date that the commissioner is selected.

22 (B) A state banking supervisor, to be designated by a selection process
23 determined by the state bank supervisors, provided that the term for which a state

1 banking supervisor may serve shall last no more than the 2-year period beginning
2 on the date that the supervisor is selected.

3 (c) DUTIES.— The Council shall have the following duties —

4 (1) to advise the Congress on financial regulation and make recommendations that
5 will enhance the integrity, efficiency, orderliness, competitiveness, and stability of the
6 United States financial markets;

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

9 (3) to identify financial companies and financial activities that should be subject
10 to heightened prudential standards in order to promote financial stability and mitigate
11 systemic risk in accordance with sections subtitles B and E of this title;

12 (4) to issue formal recommendations that a Council member agency adopt
13 heightened prudential standards for firms it regulates to mitigate systemic risk in
14 accordance with subtitle B of this title;

15 (5) to facilitate information sharing and coordination among the members of the
16 Council regarding financial services policy development, rulemakings, examinations,
17 reporting requirements, and enforcement actions;

18 (6) to provide a forum for discussion and analysis of emerging market
19 developments and financial regulatory issues among its members; and

20 (7) at the request of an agency that is a Council member, to resolve a
21 jurisdictional or regulatory dispute between that agency and another agency that is a
22 Council member in accordance with section 1002 of this title.

23 **SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FINANCIAL**

1 **REGULATORY AGENCIES.**

2 (a) REQUEST FOR DISPUTE RESOLUTION. The Council shall resolve a dispute among 2 or
3 more Federal financial regulatory agencies if—

4 (1) a Federal financial regulatory agency has a dispute with another Federal
5 financial regulatory agency about the agencies' respective jurisdiction over a particular financial
6 company or financial activity or product (excluding matters for which another dispute
7 mechanism specifically has been provided under Federal law);

8 (2) the disputing agencies cannot, after a demonstrated good faith effort, resolve
9 the dispute among themselves;

10 (3) any of the Federal financial regulatory agencies involved in the dispute—

11 (A) provides all other disputants prior notice of its intent to request dispute
12 resolution by the Council; and

13 (B) requests in writing, no earlier than 14 days after providing the notice
14 described in paragraph (A), that the Council resolve the dispute.

15 (b) COUNCIL DECISION. The Council shall decide the dispute—

16 (1) within a reasonable time after receiving the dispute resolution request;

17 (2) after consideration of relevant information provided by each party to the
18 dispute; and,

19 (3) by agreeing with 1 of the disputants regarding the entirety of the matter or by
20 determining a compromise position.

21 (c) FORM AND BINDING EFFECT. A Council decision under this section shall be in writing
22 and include an explanation and shall be binding on all Federal financial regulatory agencies that
23 are parties to the dispute.

1 **SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.**

2 The Council is authorized to appoint—

3 (a) subsidiary working groups composed of Council members and their staff, Council
4 staff, or a combination; and

5 (b) such temporary special advisory, technical, or professional committees as may be
6 useful in carrying out its functions, which may be composed of Council members and their staff,
7 other persons, or a combination.

8 **SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS AND**
9 **COUNCIL GOVERNANCE.**

10 (a) MEETINGS.— The Council shall meet as frequently as the Chairman deems necessary,
11 but not less than quarterly.

12 (b) VOTING .— Unless otherwise provided, the Council shall make all decisions the
13 Council is required or authorized to make by a majority of the total voting membership of the
14 Council under section 1001(b)(1).

15 **SEC. 1005. COUNCIL STAFF AND FUNDING.**

16 (a) DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury shall—

17 (1) detail permanent staff from the Department of the Treasury to provide the
18 Council (and any temporary special advisory, technical, or professional committees
19 appointed by the Council) with professional and expert support; and

20 (2) provide such other services and facilities necessary for the performance of the
21 Council’s functions and fulfillment of the duties and mission of the Council.

22 (b) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in
23 subsection (a), departments and agencies of the United States may, with the approval of the

1 Secretary of the Treasury—

2 (1) detail department or agency staff on a temporary basis to provide additional support to
3 the Council (and any special advisory, technical, or professional committees appointed by the
4 Council); and

5 (2) provide such services, and facilities as the other departments or agencies may
6 determine advisable.

7 (c) STAFF STATUS; COUNCIL FUNDING.—

8 (1) STATUS.— Staff detailed to the Council by the Secretary of the Treasury and
9 other United States departments or agencies shall—

10 (A) report to and be subject to oversight by the Council during their
11 assignment to the Council; and

12 (B) be compensated by the department of agency from which the staff was
13 detailed.

14 (2) FUNDING.—The administrative expense of the Council shall be paid by the
15 departments and agencies represented by voting members of the Council on an equal
16 basis.

17 **SEC. 1006. REPORTS TO CONGRESS.**

18 (a) IN GENERAL.— The Council shall submit an annual report to the Committee on
19 Financial Services of the House of Representatives and the Committee on Banking, Housing, and
20 Urban Affairs of the Senate that—

21 (1) describes significant financial market developments and potential emerging
22 threats to the stability of the financial system;

23 (2) recommends actions that will improve financial stability;

1 (3) describes any company or activity identifications made under subtitles B and
2 E; and

3 (4) describes any dispute resolutions undertaken under section 1002 and the result
4 of such resolutions.

5 (b) CONFIDENTIALITY. The Committees of the Congress receiving the Council’s report
6 shall maintain the confidentiality of the identity of companies described in accordance with
7 paragraph (a)(3) and the information relating to dispute resolutions described in accordance with
8 paragraph (a)(4).

9 **SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

10 (a) The Federal Advisory Committee Act shall not apply to the Financial Services
11 Oversight Council, or any special advisory, technical, or professional committees appointed by
12 the Council (except that, if an advisory, technical, or professional committee has one or more
13 members who are not employees of or affiliated with the United States government, the Council
14 shall publish a list of the names of the members of such committee).

15 (b) The Council shall not be deemed an “agency” for purposes of any State or Federal
16 law.

17 **SUBTITLE B – PRUDENTIAL REGULATION OF COMPANIES**
18 **AND ACTIVITIES FOR FINANCIAL STABILITY PURPOSES**

19
20 **SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN INFORMATION.**

21 (a) IN GENERAL.—The Council and the Board are authorized to receive, and may request
22 the production of, any data or information from members of the Council, as necessary—

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

1 (2) to otherwise carry out any of the provisions of this title, including to ascertain
2 a primary financial regulatory agency’s implementation of recommended prudential
3 standards under this subtitle.

4 (b) SUBMISSION BY COUNCIL MEMBERS.—Notwithstanding any provision of law, any
5 voting or nonvoting member of the Council is authorized to provide information to the Council,
6 and the members of the Council shall maintain the confidentiality of such information.

7 (c) FINANCIAL DATA COLLECTION .—

8 (1) IN GENERAL.— The Council or the Board may require the submission of
9 periodic and other reports from any financial company solely for the purpose of assessing
10 the extent to which a financial activity or financial market in which the financial
11 company participates, or the company itself, poses a threat to financial stability.

12 (2) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports
13 from financial companies that are regulated by the Federal financial regulatory agencies,
14 the Council or the Board shall coordinate with such agencies and shall, whenever
15 possible, rely on information already being collected by such agencies.

16 (d) CONSULTATION WITH AGENCIES AND ENTITIES.—The Council or the Board, as
17 appropriate, may consult with Federal and State agencies and other entities to carry out any of
18 the provisions of this subtitle.

19 **SEC. 1102. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO**
20 **PRIMARY REGULATORS**

21 (a) IN GENERAL.—The Council is authorized to issue formal recommendations, publicly
22 or privately, that a Federal financial regulatory agency adopt heightened prudential standards for
23 firms it regulates to mitigate systemic risk.

1 (b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—A Federal financial regulatory
2 agency specifically is authorized to impose, require reports regarding, examine for compliance
3 with, and enforce heightened prudential standards and safeguards for the firms it regulates to
4 mitigate systemic risk. This authority is in addition to and does not limit any other authority of
5 the Federal financial regulatory agencies. Compliance by an entity with actions taken by a
6 Federal financial regulatory agency under this section shall be enforceable in accordance with
7 the statutes governing the respective Federal financial regulatory agency’s jurisdiction over the
8 entity as if the agency action were taken under those statutes.

9 (c) AGENCY NOTICE TO COUNCIL.—A Federal financial regulatory agency shall, within
10 60 days of receiving a Council recommendation under this section, notify the Council in writing
11 regarding—

12 (1) the actions the Federal financial regulatory agency has taken in response to the
13 Council’s recommendation; or

14 (2) the reason the Federal financial regulatory agency has failed to respond to the
15 Council’s request.

16 **SEC. 1103. IDENTIFICATION OF FINANCIAL COMPANIES FOR HEIGHTENED**
17 **PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.**

18 (a) IN GENERAL.— The Council may subject a financial company to heightened
19 prudential standards under section 1104 if the Council determines that—

20 (1) material financial distress at the company could pose a threat to financial
21 stability or the economy; or

22 (2) the nature, scope, or mix of the company’s activities could pose a threat to
23 financial stability or the economy.

1 (b) CRITERIA.— In making a determination under subsection (a), the Council shall
2 consider the following criteria:

3 (1) The amount and nature of the company’s financial assets.

4 (2) The amount and nature of the company’s liabilities, including the degree of
5 reliance on short-term funding.

6 (3) The extent and nature of the company’s off-balance sheet exposures.

7 (4) The extent and nature of the company’s transactions and relationships with
8 other financial companies.

9 (5) The company’s importance as a source of credit for households, businesses,
10 and State and local governments and as a source of liquidity for the financial system.

11 (6) The nature, scope, and mix of the company’s activities.

12 (7) Any other factors that the Council deems appropriate.

13 (c) PERIODIC REVIEW AND RESCISSION OF FINDINGS .—

14 (1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to
15 the Council containing an assessment of whether each company subjected to heightened
16 prudential standards should continue to be subject to such standards.

17 (2) REVIEW AND RESCISSION.—The Council shall—

18 (A) review the assessment submitted pursuant to paragraph (1) and any
19 information or recommendation submitted by members of the Council regarding
20 whether an identified financial holding company continues to merit heightened
21 prudential standards; and

22 (B) rescind the action subjecting a company to heightened prudential
23 supervision if the Council determines that the company no longer meets the

1 conditions for identification in subsections (a) and (b).

2 (d) PROCEDURE FOR IDENTIFYING OR RESCINDING IDENTIFICATION OF A COMPANY.

3 (1) COUNCIL AND BOARD COORDINATION.— The Council shall inform the Board
4 if the Council is considering whether to identify or cease to identify a company under this
5 section.

6 (2) NOTICE AND OPPORTUNITY FOR CONSIDERATION OF WRITTEN MATERIALS.—

7 (A) IN GENERAL.— The Board shall, in an executive capacity on behalf of
8 the Council, inform a financial company that the Council is considering whether
9 to identify or cease to identify such company under this section, including an
10 explanation of the basis of the Council’s consideration, and shall provide such
11 financial company 30 days to submit written materials to inform the Council’s
12 decision. The Council shall make its decision, and the Board shall notify the
13 company of the Council’s decision by order, within 60 days of the due date for
14 such written materials

15 (B) EMERGENCY EXCEPTION TO PROCESS REQUIREMENTS.—The Council
16 may waive or modify the requirements of subparagraph (A) with respect to a
17 company if the Council determines that such waiver or modification is necessary
18 or appropriate to prevent or mitigate threats posed by the company to financial
19 stability. The Board shall, in an executive capacity on behalf of the Council,
20 provide notice of such waiver or modification to the financial company concerned
21 as soon as practicable, which shall be no later than 24 hours after the waiver or
22 modification.

23 (3) CONSULTATION.— If a financial company being considered for identification

1 under this section is, or has one or more subsidiaries that are, subject to regulation by a
2 Federal financial regulatory agency, as such subsidiaries are described in section 2(6) of
3 this subtitle, the Council shall consult with the relevant Federal financial regulatory
4 agency for each such subsidiary before making any decision under this section.

5 (4) EMERGENCY EXCEPTION TO MAJORITY VOTE OF COUNCIL REQUIREMENT.— If
6 each of the Secretary of the Treasury, the Board, and the Federal Deposit Insurance
7 Corporation determines that a financial company must be subjected to heightened
8 prudential standards under this section immediately to prevent destabilization of the
9 financial system or economy, the Secretary, the Board, and the Corporation may identify
10 a financial company under this section upon certification by the President of the United
11 States.

12 (e) EFFECT OF IDENTIFICATION.

13 (1) APPLICATION OF THE BANK HOLDING COMPANY ACT.—

14 A financial company that is not a bank holding company as defined in the
15 Bank Holding Company Act at the time of its identification under this section,
16 shall—

17 (A) if such company conducts at the time of its identification only
18 activities that are determined to be financial in nature or incidental thereto under
19 section 4(k) of the Bank Holding Company Act, be treated as a bank holding
20 company that has elected to be a financial holding company for purposes of the
21 Bank Holding Company Act of 1956, as amended, the Federal Deposit Insurance
22 Act, as amended, and all other Federal laws and regulations governing bank
23 holding companies and financial holding companies; or

1 (B) if such company conducts at the time of its identification activities
2 other than those that are determined to be financial in nature or incidental thereto
3 under section 4(k) of the Bank Holding Company Act, be required to establish
4 and conduct all its activities that are determined to be financial in nature or
5 incidental thereto under section 4(k) of the Bank Holding Company Act in an
6 intermediate holding company established under section 6 of the Bank Holding
7 Company Act, which intermediate holding company shall be the “identified
8 financial holding company” for purposes of this subtitle.

9 (2) EXEMPTIVE AUTHORITY.— Notwithstanding any provision of the Bank
10 Holding Company Act, the Board may, if it determines such action is necessary to ensure
11 appropriate heightened prudential supervision, issue such exemptions from that Act as
12 may be necessary with regard to identified financial holding companies that do not
13 control an insured depository institution.

14 (3) HEIGHTENED PRUDENTIAL REGULATION.— The Board shall apply heightened
15 prudential standards to each identified financial holding company subject to this title.

16 (f) NO PUBLIC LIST OF IDENTIFIED COMPANIES. The Council and the Board may not
17 publicly release a list of companies identified under this section.

18 **SEC. 1104. REGULATION OF IDENTIFIED FINANCIAL HOLDING COMPANIES**
19 **FOR FINANCIAL STABILITY PURPOSES**

20 (a) PRUDENTIAL STANDARDS FOR IDENTIFIED FINANCIAL HOLDING COMPANIES.—

21 (1) IN GENERAL. To mitigate risks to financial stability and the economy posed
22 by an identified financial holding company, the Board shall impose heightened prudential
23 standards on such company. Such standards shall be designed to maximize financial

1 stability taking costs to long-term financial and economic growth into account, be
2 heightened when compared to the standards that otherwise would apply to financial
3 holding companies that are not identified pursuant to this subtitle (including by
4 addressing additional or different types of risks than otherwise applicable standards), and
5 reflect the potential risk posed to financial stability by the identified financial holding
6 company.

7 (2) STANDARDS.—

8 (A) REQUIRED STANDARDS. The heightened standards imposed by the
9 Board under this section shall include—

10 (i) risk-based capital requirements;

11 (ii) leverage limits;

12 (iii) liquidity requirements;

13 (iv) concentration requirements (as specified in subsection (c));

14 (v) prompt corrective action requirements (as specified in

15 subsection (d));

16 (vi) resolution plan requirements (as specified in subsection (e));

17 and

18 (vii) overall risk management requirements.

19 (B) ADDITIONAL STANDARDS. The heightened standards imposed by the
20 Board under this section also may include any other prudential standards that the
21 Board deems advisable, including taking actions to mitigate systemic risk (as
22 specified in paragraph (5).

23 (3) APPLICATION OF REQUIRED STANDARDS. In imposing prudential standards

1 under this subsection, the Board may differentiate among identified financial holding
2 companies on an individual basis or by category, taking into consideration their capital
3 structure, risk, complexity, financial activities, the financial activities of their
4 subsidiaries, and any other factors that the Board deems appropriate.

5 (4) WELL CAPITALIZED AND WELL MANAGED.—An identified financial holding
6 company shall at all times after it files its registration statement as an identified financial
7 holding company be well capitalized and well managed as defined by the Board.

8 (5) MITIGATION OF SYSTEMIC RISK.—If the Board determines, after notice and an
9 opportunity for hearing, that the size of an identified financial holding company or the
10 scope or nature of activities directly or indirectly conducted by an identified financial
11 holding company poses a threat to the safety and soundness of such company or to the
12 financial stability of the United States, the Board may require the identified financial
13 holding company to sell or otherwise transfer assets or off-balance sheet items to
14 unaffiliated firms, to terminate one or more activities, or to impose conditions on the
15 manner in which the identified financial holding company conducts one or more
16 activities.

17 (6) APPLICATION TO FOREIGN FINANCIAL COMPANIES.— The Board shall
18 prescribe regulations regarding the application of heightened prudential standards to
19 financial companies that are organized or incorporated in a country other than the United
20 States, and that own or control a Federal or State branch, subsidiary, or operating entity
21 that is an identified financial holding company, giving due regard to the principle of
22 national treatment and equality of competitive opportunity.

23 (b) PRUDENTIAL STANDARDS AT FUNCTIONALLY REGULATED SUBSIDIARIES AND

1 SUBSIDIARY DEPOSITORY INSTITUTIONS.—

2 (1) BOARD AUTHORITY TO RECOMMEND STANDARDS.—With respect to a
3 functionally regulated subsidiary (as such term is defined in section 5 of the Bank
4 Holding Company Act) or a subsidiary depository institution of an identified financial
5 holding company, the Board may recommend that the relevant primary financial
6 regulatory agency for such functionally regulated subsidiary or subsidiary depository
7 institution prescribe heightened prudential standards on such functionally regulated
8 subsidiary or subsidiary depository institution. Any standards recommended by the
9 Board under this section shall be of the same type as those described in subsection (a)(2)
10 that the Board is required or authorized to impose directly on the identified financial
11 holding company.

12 (2) AGENCY AUTHORITY TO IMPLEMENT HEIGHTENED STANDARDS AND
13 SAFEGUARDS.— Each primary financial regulatory agency that receives a Board
14 recommendation under paragraph (1) is authorized to impose, require reports regarding,
15 examine for compliance with, and enforce standards under this subsection with respect to
16 the entities described in section 2(6) for which it is the primary financial regulatory
17 agency. This authority is in addition to and does not limit any other authority of the
18 primary financial regulatory agencies. Compliance by an entity with actions taken by a
19 primary financial regulatory agency under this section shall be enforceable in accordance
20 with the statutes governing the respective agency's jurisdiction over the entity as if the
21 agency action were taken under those statutes.

22 (3) IMPOSITION OF STANDARDS.—Standards imposed by a primary financial
23 regulatory agency under this subsection shall be the standards recommended by the

1 Board or any other similar standards that the Board deems acceptable after consultation
2 between the Board and the primary financial regulatory agency.

3 (4) FAILURE TO ADOPT STANDARDS; NOTICE TO COUNCIL AND BOARD.— If a
4 primary financial regulatory agency fails to implement the prudential standards
5 recommended by the Board or other similar standards that are acceptable to the Board
6 within 60 days of the Board’s recommendation, the agency shall justify in writing the
7 failure of such agency to act to the Council and the Board within that same time period.

8 (5) BACKUP AUTHORITY OF THE BOARD.—

9 (A) IN GENERAL.— When notified that a primary financial regulatory
10 agency has failed to impose the heightened prudential standards recommended by
11 the Board for financial stability purposes under this subsection, the Board is
12 authorized to directly impose, require reports regarding, examine for compliance
13 with, and enforce such heightened prudential standards under this subsection with
14 respect to a functionally regulated subsidiary for which the primary financial
15 regulatory agency ordinarily is responsible.

16 (B) LIMITATIONS ON BOARD BACKUP AUTHORITY.— The Board’s
17 standard-imposition, report-related, examination, and enforcement activities under
18 this subsection shall be limited to the heightened prudential standards imposed
19 under this subsection.

20 (c) CONCENTRATION LIMITS FOR IDENTIFIED FINANCIAL HOLDING COMPANIES.

21 (1) STANDARDS.—In order to limit the risks that the failure of any company could
22 pose to an identified financial holding company and to the stability of the United States

1 financial system, the Board, by regulation, shall prescribe standards that limit the risks
2 posed by the exposure of an identified financial holding company to any other company.

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

8 (3) CREDIT EXPOSURE.—For purposes of this subsection, an identified financial
9 holding company’s “credit exposure” to a company means—

10 (A) all extensions of credit to the company, including loans, deposits, and
11 lines of credit;

12 (B) all repurchase agreements and reverse repurchase agreement with the
13 company;

14 (C) all securities borrowing and lending transactions with the company to
15 the extent that such transactions create credit exposure of the identified financial
16 holding company to the company;

17 (D) all guarantees, acceptances, or letters of credit (including endorsement
18 or standby letters of credit) issued on behalf of the company;

19 (E) all purchases of or investment in securities issued by the company;

20 (F) counterparty credit exposure to the company in connection with a
21 derivative transaction between the identified financial holding company and the
22 company; and

1 (G) any other similar transactions that the Board by regulation determines
2 to be a credit exposure for purposes of this section.

3 (4) **ATTRIBUTION RULE.**—For purposes of this subsection, any transaction by an
4 identified financial holding company with any person is deemed a transaction with a
5 company to the extent that the proceeds of the transaction are used for the benefit of, or
6 transferred to, that company.

7 (5) **RULEMAKING.**— The Board may issue such regulations and orders, including
8 definitions consistent with this subsection, as may be necessary to administer and carry
9 out the purpose of this subsection.

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

13 (7) **TRANSITION PERIOD.**—This subsection and any regulations and orders of the
14 Board under the authority of this subsection shall not be effective until three years from
15 the effective date of this subsection. The Board can extend the effective date for up to
16 two additional years to promote financial stability.

17 (d) **PROMPT CORRECTIVE ACTION FOR IDENTIFIED FINANCIAL HOLDING COMPANIES.**—

18 (1) **PROMPT CORRECTIVE ACTION REQUIRED.**—The Board shall take prompt
19 corrective action to resolve the problems of identified financial holding companies.

20 (2) **DEFINITIONS.**—For purposes of this section—

21 (A) **CAPITAL CATEGORIES.**—

22 (i) **WELL CAPITALIZED.**—An identified financial holding company
23 is ‘well capitalized’ if it exceeds the required minimum level for each

1 relevant capital measure.

2 (ii) UNDERCAPITALIZED.—An identified financial holding company
3 is ‘undercapitalized’ if it fails to meet the required minimum level for any
4 relevant capital measure.

5 (iii) SIGNIFICANTLY UNDERCAPITALIZED.—An identified financial
6 holding company is ‘significantly undercapitalized’ if it is significantly
7 below the required minimum level for any relevant capital measure.

8 (iv) CRITICALLY UNDERCAPITALIZED.—An identified financial
9 holding company is ‘critically undercapitalized’ if it fails to meet any level
10 specified in paragraph (4)(C)(i).

11 (3) OTHER DEFINITIONS.—

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

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

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

21 (ii) a payment by an identified financial holding company to
22 repurchase, redeem, retire, or otherwise acquire any of its shares or other
23 ownership interests, including any extension of credit to finance any

1 person's acquisition of those shares or interests; or

2 (iii) a transaction that the Board determines, by order or regulation,
3 to be in substance a distribution of capital to the owners of the identified
4 financial holding company.

5 (C) CAPITAL RESTORATION PLAN.—The term 'capital restoration plan'
6 means a plan submitted under paragraph (6)(B).

7 (D) COMPENSATION—The term 'compensation' includes any payment of
8 money or provision of any other thing of value in consideration of employment.

9 (E) RELEVANT CAPITAL MEASURE.—The term 'relevant capital measure'
10 means the measures described in paragraph (4).

11 (F) REQUIRED MINIMUM LEVEL.—The term 'required minimum level'
12 means, with respect to each relevant capital measure, the minimum acceptable
13 capital level specified by the Board by regulation.

14 (G) SENIOR EXECUTIVE OFFICER. The term 'senior executive officer' has
15 the same meaning as the term 'executive officer' in section 22(h) of the Federal
16 Reserve Act (12 U.S.C. § 375b).

17 (4) CAPITAL STANDARDS.—

18 (A) RELEVANT CAPITAL MEASURES.—

19 (i) IN GENERAL.—Except as provided in clause (ii)(II), the capital
20 standards prescribed by the Board under subsection 6(c) of the Bank
21 Holding Company Act of 1956 (12 U.S.C. § 1845(c)) shall include—

22 “(I) a leverage limit; and

23 “(II) a risk-based capital requirement.

1 (ii) OTHER CAPITAL MEASURES.—The Board may by regulation—

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

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

7 (B) CAPITAL CATEGORIES GENERALLY.—The Board shall, by regulation,
8 specify for each relevant capital measure the levels at which an identified
9 financial holding company is well capitalized, undercapitalized, and significantly
10 undercapitalized.

11 (C) CRITICAL CAPITAL.—

12 (i) BOARD TO SPECIFY LEVEL.—

13 (I) LEVERAGE LIMIT.—The Board shall, by regulation,
14 specify the ratio of tangible equity to total assets at which an
15 identified financial holding company is critically undercapitalized.

16 (II) OTHER RELEVANT CAPITAL MEASURES.—The Board
17 may, by regulation, specify for 1 or more other relevant capital
18 measures, the level at which an identified financial holding
19 company is critically undercapitalized.

20 (ii) LEVERAGE LIMIT RANGE.— The level specified under clause

21 (i)(I) shall require tangible equity in an amount—

22 (I) not less than 2 percent of total assets; and

23 (II) except as provided in subclause (I), not more than 65

1 percent of the required minimum level of capital under the
2 leverage limit.

3 (5) CAPITAL DISTRIBUTIONS RESTRICTED.—

4 (A) IN GENERAL.—An identified financial holding company shall make no
5 capital distribution if, after making the distribution, the identified financial
6 holding company would be undercapitalized.

7 (B) EXCEPTION.— Notwithstanding subparagraph (A), the Board may
8 permit an identified financial holding company to repurchase, redeem, retire, or
9 otherwise acquire shares or ownership interests if the repurchase, redemption,
10 retirement, or other acquisition—

11 (i) is made in connection with the issuance of additional shares or
12 obligations of the identified financial holding company in at least an
13 equivalent amount; and

14 (ii) will reduce the identified financial holding company's financial
15 obligations or otherwise improve the identified financial holding
16 company's financial condition.

17 (6) PROVISIONS APPLICABLE TO UNDERCAPITALIZED IDENTIFIED FINANCIAL
18 COMPANIES.—

19 (A) MONITORING REQUIRED.—The Board shall—

20 (i) closely monitor the condition of any undercapitalized identified
21 financial holding company;

22 (ii) closely monitor compliance by any undercapitalized identified
23 financial holding company with capital restoration plans, restrictions, and
24

1 requirements imposed under this section; and

2 (iii) periodically review the plan, restrictions, and requirements
3 applicable to any undercapitalized identified financial holding company to
4 determine whether the plan, restrictions, and requirements are effective.

5 (B) CAPITAL RESTORATION PLAN REQUIRED.—

6 (i) IN GENERAL.—Any undercapitalized identified financial holding
7 company shall submit an acceptable capital restoration plan to the Board
8 within the time allowed by the Board under clause (iv).

9 (ii) CONTENTS OF PLAN.—The capital restoration plan shall—

10 (I) specify—

11 (AA) the steps the identified financial holding
12 company will take to become well capitalized;

13 (BB) the levels of capital to be attained by the
14 identified financial holding company during each year in
15 which the plan will be in effect;

16 (CC) how the identified financial holding company
17 will comply with the restrictions or requirements then in
18 effect under this section; and

19 (DD) the types and levels of activities in which the
20 identified financial holding company will engage; and

21 (II) contain such other information that the Board may
22 require.

23 (iii) CRITERIA FOR ACCEPTING PLAN.—The Board shall not accept a

1 capital restoration plan unless it determines that the plan—

2 (I) complies with subparagraph (B);

3 (II) is based on realistic assumptions, and is likely to
4 succeed in restoring the identified financial holding company's
5 capital; and

6 (III) would not appreciably increase the risk (including
7 credit risk, interest-rate risk, and other types of risk) to which the
8 identified financial holding company is exposed.

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

11 (I) provide identified financial holding companies with
12 reasonable time to submit capital restoration plans, and generally
13 require an identified financial holding company to submit a plan
14 not later than 45 days after it becomes undercapitalized; and

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

18 (C) ASSET GROWTH RESTRICTED.—An undercapitalized identified
19 financial holding company shall not permit its average total assets during any
20 calendar quarter to exceed its average total assets during the preceding calendar
21 quarter unless—

22 (i) the Board has accepted the identified financial holding
23 company's capital restoration plan;

1 (ii) any increase in total assets is consistent with the plan; and

2 (iii) the identified financial holding company's ratio of tangible

3 equity to total assets increases during the calendar quarter at a rate

4 sufficient to enable it to become well capitalized within a reasonable time.

5 (D) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF
6 BUSINESS.—An undercapitalized identified financial holding company shall not,
7 directly or indirectly, acquire any interest in any company or insured depository
8 institution, or engage in any new line of business, unless—

9 (i) the Board has accepted the identified financial holding
10 company's capital restoration plan, the identified financial holding
11 company is implementing the plan, and the Board determines that the
12 proposed action is consistent with and will further the achievement of the
13 plan;

14 (ii) the Board determines that the specific proposed action is
15 appropriate; or

16 (iii) the Board has exempted the identified financial holding
17 company from the requirements of this paragraph with respect to the class
18 of acquisitions that includes the proposed action.

19 (E) DISCRETIONARY SAFEGUARDS.— The Board may, with respect to any
20 undercapitalized identified financial holding company, take actions described in
21 any subparagraph of paragraph (7)(B) if the Board determines that those actions
22 are necessary.

23 (7) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED IDENTIFIED

1 FINANCIAL HOLDING COMPANIES AND UNDERCAPITALIZED IDENTIFIED FINANCIAL
2 HOLDING COMPANIES THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION
3 PLANS.—

4 (A) IN GENERAL.—This paragraph shall apply with respect to any
5 identified financial holding company that—

6 (i) is significantly undercapitalized; or

7 (ii) is undercapitalized and—

8 (I) fails to submit an acceptable capital restoration plan
9 within the time allowed by the Board under subsection (e)(2)(D);

10 or

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

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

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

17 (I) Requiring the identified financial holding company to
18 sell enough shares or obligations of the identified financial holding
19 company so that the identified financial holding company will be
20 well capitalized after the sale.

21 (II) Further requiring that instruments sold under clause (I)
22 be voting shares.

23 “(III) Requiring the identified financial holding company to

1 be acquired by or combine with another company.

2 (ii) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

3 (I) Requiring the identified financial holding company to
4 comply with section 23A of the Federal Reserve Act (12 U.S.C.
5 371c), as if it were a member bank.

6 (II) Further restricting the identified financial holding
7 company's transactions with affiliates and insiders.

8 (iii) RESTRICTING ASSET GROWTH.—Restricting the identified
9 financial holding company's asset growth more stringently than subsection
10 (6)(C), or requiring the identified financial holding company to reduce its
11 total assets.

12 (iv) RESTRICTING ACTIVITIES.—Requiring the identified financial
13 holding company or any of its subsidiaries to alter, reduce, or terminate
14 any activity that the Board determines poses excessive risk to the
15 identified financial holding company.

16 (v) IMPROVING MANAGEMENT.—Doing one or more of the
17 following—

18 (I) New election of directors.—Ordering a new election for
19 the identified financial holding company's board of directors.

20 (II) Dismissing directors or senior executive officers.—
21 Requiring the identified financial holding company to dismiss from
22 office any director or senior executive officer who had held office
23 for more than 180 days immediately before the identified financial

1 holding company became undercapitalized. Dismissal under this
2 clause shall not be construed to be a removal under section 8 of the
3 Federal Deposit Insurance Act (12 U.S.C. 1818).

4 (III) Employing qualified senior executive officers.—

5 Requiring the identified financial holding company to employ
6 qualified senior executive officers (who, if the Board so specifies,
7 shall be subject to approval by the Board).

8 (vi) REQUIRING DIVESTITURE.—Requiring the identified financial
9 holding company to divest itself of or liquidate any subsidiary if the Board
10 determines that the subsidiary is in danger of becoming insolvent, poses a
11 significant risk to the identified financial holding company, or is likely to
12 cause a significant dissipation of the identified financial holding
13 company's assets or earnings.

14 (vii) REQUIRING OTHER ACTION.—Requiring the Identified
15 financial company to take any other action that the Board determines will
16 better carry out the purpose of this section than any of the actions
17 described in this paragraph.

18 (C) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with
19 subparagraph (B), the Board shall take the following actions, unless the Board
20 determines that the actions would not be appropriate—

21 (i) The action described in subclause (I) or (II) of subparagraph
22 (B)(i) (relating to requiring the sale of shares or obligations, or requiring
23 the identified financial holding company to be acquired by or combine

1 with another company).

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

4 (D) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

5 (i) IN GENERAL.—The identified financial holding company shall
6 not do any of the following without the prior written approval of the
7 Board—

8 (I) Pay any bonus to any senior executive officer.

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

14 (ii) FAILING TO SUBMIT PLAN.—The Board shall not grant any
15 approval under clause (i) with respect to an identified financial holding
16 company that has failed to submit an acceptable capital restoration plan.

17 (E) CONSULTATION WITH OTHER REGULATORS.—Before the Board makes a
18 determination under subparagraph (B)(vi) with respect to a subsidiary that is a
19 broker, dealer, government securities broker, government securities dealer,
20 investment company, or investment adviser, the Board shall consult with the
21 Securities and Exchange Commission and, in the case of any other subsidiary
22 which is subject to any financial responsibility or capital requirement, any other
23 appropriate regulator of such subsidiary with respect to the proposed

1 determination of the Board and actions pursuant to such determination.

2 (8) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

3 (A) IN GENERAL.—If the Board determines (after notice and an
4 opportunity for hearing) that an identified financial holding company is in an
5 unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit
6 Insurance Act (12 U.S.C. 1818(b)(8)), deems the identified financial holding
7 company to be engaging in an unsafe or unsound practice, the Board may—

8 (i) if the identified financial holding company is well capitalized,
9 require the identified financial holding company to comply with one or
10 more provisions of paragraphs (5) and (6), as if the institution were
11 undercapitalized; or

12 (ii) if the identified financial holding company is undercapitalized,
13 take any one or more actions authorized under paragraph (7)(B) as if the
14 identified financial holding company were significantly undercapitalized.

15 (B) CONTENTS OF PLAN.—A plan that may be required pursuant to
16 subparagraph (A)(i) shall specify the steps that the identified financial holding
17 company will take to correct the unsafe or unsound condition or practice.

18 (9) MANDATORY BANKRUPTCY PETITION FOR CRITICALLY UNDERCAPITALIZED
19 IDENTIFIED FINANCIAL COMPANIES.— The Board shall, not later than 90 days after an
20 identified financial holding company becomes critically undercapitalized—

21 (A) require the identified financial holding company to file a petition for
22 bankruptcy under section 301 of title 11, United States Code; or

23 (B) file a petition for bankruptcy against the identified financial holding

1 company under section 303 of title 11, United States Code.

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

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

8 (12) CONSULTATION.—The Board and the Secretary of the Treasury shall consult
9 with their foreign counterparties and through appropriate multilateral organizations to
10 reach agreement to extend comprehensive and robust prudential supervision and
11 regulation to all highly leveraged and substantially interconnected financial companies.

12 (13) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

13 (A) TIMELY PETITION REQUIRED.—A director or senior executive officer
14 dismissed pursuant to an order under paragraph (7)(B)(v)(II) may obtain review
15 of that order by filing a written petition for reinstatement with the Board not later
16 than 10 days after receiving notice of the dismissal.

17 (B) PROCEDURE.—

18 (i) HEARING REQUIRED.—The Board shall give the petitioner an
19 opportunity to—

20 (I) submit written materials in support of the petition; and

21 (II) appear, personally or through counsel, before 1 or more
22 members of the Board or designated employees of the Board.

23 (ii) DEADLINE FOR HEARING.—The Board shall—

1 (I) schedule the hearing referred to in clause (i)(II)
2 promptly after the petition is filed; and

3 (II) hold the hearing not later than 30 days after the petition
4 is filed, unless the petitioner requests that the hearing be held at a
5 later time.

6 (iii) DEADLINE FOR DECISION.—Not later than 60 days after the
7 date of the hearing, the Board shall—

8 (I) by order, grant or deny the petition;

9 (II) if the order is adverse to the petitioner, set forth the
10 basis for the order; and

11 (III) notify the petitioner of the order.

12 (C) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall
13 bear the burden of proving that the petitioner's continued employment would
14 materially strengthen the identified financial holding company's ability—

15 (i) to become well capitalized, to the extent that the order is based
16 on the identified financial holding company's capital level or failure to
17 submit or implement a capital restoration plan; and

18 (ii) to correct the unsafe or unsound condition or unsafe or
19 unsound practice, to the extent that the order is based on paragraph

20 (8)(A).”.

21 (e) REPORTS REGARDING RAPID AND ORDERLY RESOLUTION AND CREDIT EXPOSURE.—

22 (1) IN GENERAL.— The Board shall require each identified financial holding
23 company to report periodically to the Board on:

1 (A) its plan for rapid and orderly resolution in the event of severe financial
2 distress;

3 (B) the nature and extent to which the identified financial holding
4 company has credit exposure to other significant financial companies; and

5 (C) the nature and extent to which other significant financial companies
6 have credit exposure to the identified financial holding company.

7 (2) NO LIMITING EFFECT ON RECEIVER OR QUALIFIED RECEIVER.—A rapid
8 resolution plan submitted in accordance with this subsection shall not be binding on a
9 receiver or qualified receiver appointed under subtitle G, a bankruptcy court, or any other
10 authority that is authorized or required to resolve the identified financial holding
11 company or any of its subsidiaries or affiliates.

12 (f) AVOIDING DUPLICATION.—The Board shall take any action the Board deems
13 appropriate to avoid imposing duplicative requirements under this chapter for identified financial
14 holding companies that are also bank holding companies.

15 **SEC. 1105. AUTHORITY TO FILE INVOLUNTARY PETITION FOR**
16 **BANKRUPTCY.—**

17 Section 303 of title 11, United States Code, is amended() in subsection (h)—

18 (a) by striking ‘or’ at the end of paragraph (1);(b) by striking the period at the end of
19 paragraph (2) and inserting “; or”; and

20 (c) by adding the following new paragraph—

21 “(m) Notwithstanding subsections (a) and (b) of this section, an involuntary case may be
22 commenced by the Board of Governors of the Federal Reserve System against an identified
23 financial holding company as defined in section 2(t) of the Bank Holding Company Act of 1956.

1 Such involuntary case may be commenced on the ground that the identified financial holding
2 company is critically undercapitalized as defined in section 6A(b) of the Bank Holding Company
3 Act of 1956.”.

4 **SEC. 1106. IDENTIFICATION OF ACTIVITIES OR PRACTICES FOR HEIGHTENED**
5 **PRUDENTIAL STANDARDS AND SAFEGUARDS FOR FINANCIAL STABILITY**
6 **PURPOSES.**

7 (a) IN GENERAL.— The Council may subject a financial activity or practice to
8 heightened prudential standards and safeguards under section 1107 if the Council determines that
9 the conduct of such activity or practice could create or increase the risk of significant liquidity,
10 credit, or other problems spreading among financial institutions or markets and thereby threaten
11 the stability of the financial system.

12 (b) PERIODIC REVIEW OF ACTIVITY IDENTIFICATIONS.—

13 (1) SUBMISSION OF ASSESSMENT.— The Board shall periodically submit a report
14 to the Council containing an assessment of whether each activity or practice subjected to
15 heightened prudential standards should continue to be subject to such standards.

16 (2) REVIEW AND RECISSION.— The Council shall—

17 (A) review the assessment submitted pursuant to paragraph (1) and any
18 information or recommendation submitted by members of the Council regarding
19 whether an identified financial activity continues to merit heightened prudential
20 standards; and

21 (B) rescind the action subjecting an activity to heightened prudential
22 supervision if the Council determines that the activity no longer meets the criteria
23 in subsection (a).

1 (c) PROCEDURE FOR IDENTIFYING OR RESCINDING IDENTIFICATION OF AN ACTIVITY OR
2 PRACTICE.—

3 (1) COUNCIL AND BOARD COORDINATION.— The Council shall inform the Board
4 if the Council is considering whether to identify or cease to identify an activity under this
5 section.

6 (2) NOTICE AND OPPORTUNITY FOR CONSIDERATION OF WRITTEN MATERIALS.—

7 (A) IN GENERAL.— The Board shall, in an executive capacity on behalf of
8 the Council, provide notice to financial companies that the Council is considering
9 whether to identify an activity or practice for heightened prudential regulation,
10 and shall provide a financial company engaged in such activity or practice 30
11 days to submit written materials to inform the Council’s decision. The Council
12 shall decide, and the Board shall provide notice of the Council’s decision, within
13 60 days of the due date for such written materials.

14 (B) EMERGENCY EXCEPTION.—The Council may waive or modify the
15 requirements of subparagraph (A) if the Council determines that such waiver or
16 modification is necessary or appropriate to prevent or mitigate threats posed by an
17 activity to financial stability. The Board shall, in an executive capacity on behalf
18 of the Council, provide notice of such waiver or modification to financial
19 companies as soon as practicable, which shall be no later than 24 hours after the
20 waiver or modification.

21 (3) FORM OF DECISION.— The Board shall provide all notices required under this
22 subsection by posting a notice on the Board’s web site and publishing a notice in the
23 Federal Register.

1 (e) EFFECT OF IDENTIFICATION. – The Board shall, in accordance with section 1107,
2 recommend to the appropriate primary financial regulatory agencies specific heightened
3 prudential standards to be applied to an activity or practice that the Council or the Board
4 identifies under this section.

5 **SEC. 1107. REGULATION OF IDENTIFIED ACTIVITIES FOR FINANCIAL**
6 **STABILITY PURPOSES**

7 (a) LIMITATIONS ON IDENTIFIED FINANCIAL ACTIVITIES AND PRACTICES.—

8 (1) RECOMMENDATIONS.— To mitigate the risks to United States financial stability and
9 the United States economy posed by financial activities and practices that the Council or the
10 Board identifies for heightened prudential scrutiny in accordance with section 1103, the Board
11 shall recommend prudential standards to the appropriate primary financial regulatory agencies to
12 apply to such identified activities and practices.

13 (2) CRITERIA.— The actions recommended under paragraph (1)—

14 (A) shall be designed to maximize financial stability, taking costs to long-term
15 financial and economic growth into account; and

16 (B) may include prescribing the conduct of the activity or practice in specific
17 ways (such as by limiting its scope, or applying particular capital or risk-management
18 requirements to the conduct of the activity) or prohibiting the activity or practice
19 altogether.

20 (b) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

21 (1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.— Each primary
22 financial regulatory agency is authorized to impose, require reports regarding, examine
23 for compliance with, and enforce standards in accordance with this section with respect to

1 those entities described in section 2(6) for which it is the primary financial regulatory
2 agency. This authority is in addition to and does not limit any other authority of the
3 primary financial regulatory agencies. Compliance by an entity with actions taken by a
4 primary financial regulatory agency under this section shall be enforceable in accordance
5 with the statutes governing the respective primary financial regulatory agency's
6 jurisdiction over the entity as if the agency action were taken under those statutes.

7 (2) IMPOSITION OF STANDARDS.—Standards imposed under this subsection shall
8 be the standards recommended by the Board in accordance with subsection (a) or any
9 other similar standards that the Board deems acceptable after consultation between the
10 Board and the primary financial regulatory agency.

11 (3) FAILURE TO ADOPT STANDARDS; NOTICE TO COUNCIL AND BOARD.— If a
12 primary financial regulatory agency fails to implement the prudential standards
13 recommended by the Board or other similar standards that are acceptable to the Board
14 within 60 days of the Board's recommendation, the primary financial regulatory agency
15 shall justify the failure of such agency to act in writing to the Council and the Board
16 within that same time period.

17 (4) BACKUP AUTHORITY OF THE BOARD.—

18 (A) IN GENERAL.— When notified that a primary financial regulatory
19 agency has failed to impose heightened prudential standards recommended by the
20 Board for financial stability purposes under this section, the Board is authorized
21 to directly impose, require reports regarding, examine for compliance with, and
22 enforce such heightened prudential standards under this section with respect to
23 entities described in section 2(6) for which the primary financial regulatory

1 agency ordinarily is responsible.

2 (B) LIMITATION ON BOARD BACKUP AUTHORITY.— The Board’s standard-
3 imposition, report-related, examination, and enforcement activities under this
4 subsection shall be limited to heightened prudential standards imposed under this
5 section and shall be done in coordination with the primary financial regulatory
6 agency.

7 **SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION**

8 (a) NOTICE.— When the Council or the Board determines that a company or activity no
9 longer is identified for heightened prudential scrutiny, the Board shall inform the relevant
10 primary financial regulatory agency or agencies (if different from the Board) of that finding.

11 (b) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.— A
12 primary financial regulatory agency that has imposed heightened prudential standards for
13 financial stability purposes under this subtitle shall determine whether standards that it has
14 imposed under this subtitle should remain in effect.

15 **SEC. 1109. EMERGENCY FINANCIAL STABILIZATION**

16 (a) IN GENERAL.— Upon the written approval of the Board of Governors of the Federal
17 Reserve System (which approval shall be made upon a vote of not less than two-thirds of the
18 members of such Board then serving) and the Board of Directors of the Corporation (which
19 approval shall be made upon a vote of not less than two-thirds of the members of such Board
20 then serving), and with the written consent of the Secretary of the Treasury (after consulting with
21 the President), the Corporation may extend credit to or guarantee obligations of solvent insured
22 depository institutions or other solvent companies that are predominantly engaged in activities
23 that are financial in nature, if necessary to prevent financial instability during times of severe

1 economic distress, provided that a credit extension or guarantee of obligations under this section
2 shall not include provision of equity in any form.

3 (b) POLICIES AND PROCEDURES.—Prior to exercising any authority under this section, the
4 Corporation shall establish policies and procedures governing the extension of credit and the
5 issuance of guarantees. The terms and conditions of any extensions of credit or guarantees
6 issued shall be established by the Corporation with the approval of the Secretary of the Treasury
7 and the Board of Governors of the Federal Reserve System.

8 (c) FUNDING.—There shall be available to the Corporation to carry out this section
9 amounts in the Treasury not otherwise appropriated, including for the payment of reasonable
10 administrative expenses. Notwithstanding section 7(d) of the Federal Deposit Insurance Act (12
11 U.S.C. § 1817(d)), such amounts shall be subject to apportionment for the purposes of chapter 15
12 of title 31, United States Code. Amounts received by the Corporation from assessments imposed
13 under subsection (d), extensions of credit, and guarantees, including payments of principal,
14 interest, and guarantee fees, shall be covered into the Treasury as miscellaneous receipts.

15 (d) RECOUPMENT; ASSESSMENT.—Any losses incurred by the Corporation pursuant to
16 subsection (a) shall be recovered from Corporation assessments on large financial companies in
17 the manner provided in section 1609(o) of the Resolution Authority for Large, Interconnected
18 Financial Companies Act of 2009.

19 (e) DEFINITIONS.— For purposes of this section, the following definitions apply:

20 (1) ACTIVITIES THAT ARE FINANCIAL IN NATURE.— The term “activities that are
21 financial in nature” means activities that are determined to be financial in nature under
22 section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)) and

1 activities that are identified for heightened prudential standards under section 1106 of this
2 title.

3 (2) COMPANY.—The term “company” means any entity other than a natural
4 person that is incorporated or organized under Federal law or the laws of any State.

5 (3) CORPORATION.—The term “Corporation” means the Federal Deposit
6 Insurance Corporation.

7 (4) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution”
8 shall have the same meaning as in section 3 of the Federal Deposit Insurance Act (12
9 U.S.C. § 1813).

10 (5) SOLVENT.—The term “solvent” means assets are more than the obligations to
11 creditors.

12 **SEC. 1110. EXAMINATIONS AND ENFORCEMENT ACTIONS FOR INSURANCE**
13 **AND RESOLUTIONS PURPOSES**

14 (a) Examinations for Insurance and Resolutions Purposes.— Section 10(b)(3) of the
15 Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking beginning
16 “whenever the Board of Directors determines” through the period and inserting “or identified
17 financial holding company (as defined in section 2(5)) whenever the Board of Directors
18 determines a special examination of any such depository institution is necessary to determine the
19 condition of such depository institution for insurance or such identified financial holding
20 company for resolution purposes.”.

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

23 (1) at the end of subparagraph (B) by striking “or”;

1 (2) at the end of subparagraph (C) by striking the period and inserting “; or”;

2 (3) by inserting new subparagraph (D), as follows --

3 “(D) the conduct or threatened conduct (including any acts or omissions)
4 of the depository institution holding company poses a risk to the Deposit
5 Insurance Fund”; and

6 (4) by adding new paragraph (6) at the end as follows --

7 “(6) For purposes of this subsection—

8 (A) The Corporation shall have the same powers with respect to a
9 depository institution holding company and its affiliates as the appropriate
10 Federal banking agency has with respect to the holding company and its
11 affiliates; and

12 (B) the holding company and its affiliates shall have the same
13 duties and obligations with respect to the Corporation as the holding
14 company and its affiliates have with respect to the appropriate Federal
15 banking agency.”.

16 **SEC. 1111. RULE OF CONSTRUCTION.** The authorities granted to agencies under this
17 subtitle are in addition to any rulemaking, report-related, examination, enforcement, or other
18 authority that such agencies may have under other law and in no way shall be construed to limit
19 such other authority, except that any standards imposed for financial stability purposes under this
20 subtitle shall supersede any conflicting less stringent requirements of the primary financial
21 regulatory agency but only the extent of the conflict.

22 **SUBTITLE C—IMPROVEMENTS TO**
23 **SUPERVISION AND REGULATION OF**
24 **FEDERAL DEPOSITORY INSTITUTIONS**

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SEC. 1201. DEFINITIONS.

For purposes of this subtitle, 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) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—The term “Office of the Comptroller of the Currency” means the office established by section 324 of the Revised Statutes (12 U.S.C. 1).

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

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

(6) TRANSFER DATE.—The term “transfer date” has the meaning provided in section 1205.

(7) 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.

SEC. 1202. AMENDMENTS TO THE HOME OWNERS’ LOAN ACT RELATING TO TRANSFER OF FUNCTIONS.

1 (a) AMENDMENTS TO SECTION 2.—Section 2 of the Home Owners’ Loan Act (12 U.S.C.
2 1462) is amended by revising paragraph (1) as follows:

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

5 (b) AMENDMENTS TO SECTION 3.—Section 3 of the Home Owners’ Loan Act (12 U.S.C.
6 1462a) is amended—

7 (1) by striking subsection (a) and inserting the following new subsection:

8 “(a) ESTABLISHMENT OF DIVISION OF THRIFT SUPERVISION.—To carry out the
9 purposes of this Act, there is hereby established the Division of Thrift Supervision, which
10 shall be a division within the Office of the Comptroller of the Currency.”;

11 (2) in subsection (b)—

12 (A) by striking paragraph (1) and inserting the following new paragraph:

13 “(1) IN GENERAL.—The Division of Thrift Supervision shall be headed by
14 a Deputy Comptroller of the Currency who shall be subject to the general oversight of the
15 Comptroller of the Currency.”;

16 (B) in paragraph (2), by striking “Director” and inserting “Comptroller of
17 the Currency”; and

18 (C) by striking paragraph (3) and (4);

19 (3) by striking subsections (c), (d), and (e) and inserting the following new
20 subsection:

21 “(c) POWERS OF THE COMPTROLLER OF THE CURRENCY.—The Comptroller of the
22 Currency shall have all the powers, duties, and functions transferred by the Financial

1 Stability Improvement Act of 2009 to the Comptroller of the Currency to carry out this
2 Act.”;

3 (4) by redesignating subsections (f) and (i) as subsections (d) and (e),
4 respectively;

5 (5) in subsection (d) (as so redesignated), by striking “Director” each place such
6 term appears and inserting “Comptroller of the Currency”;

7 (6) by striking subsections (g), (h), and (j); and

8 (7) in subsection (e) (as so redesignated), by striking “compensation of the
9 Director and other employees of the Office and all other expenses thereof” and inserting
10 “expenses incurred by the Comptroller of the Currency in carrying out this Act”.

11 (c) AMENDMENTS TO SECTION 4.—Section 4 of the Home Owners’ Loan Act (12 U.S.C.
12 1463) is amended by striking “Director” every time it appears and inserting “Comptroller of the
13 Currency”.

14 (d) AMENDMENTS TO SECTION 5.—

15 (1) UNIVERSAL.—Section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) is
16 amended—

17 (A) by striking “Director” and “Director of the Office of Thrift Supervision” each
18 place such term appears and inserting “Comptroller of the Currency”; and

19 (B) by striking “Director’s” each place such term appears and inserting
20 “Comptroller of the Currency’s”.

21 (2) SPECIFIC PROVISIONS.—

22 (A) Section 5(d)(2)(E) of the Home Owners’ Loan Act is amended by striking “or
23 the Resolution Trust Corporation, as appropriate,” each place such term appears.

1 (B) Section 5(d)(3)(B) of the Home Owners’ Loan Act is amended by striking
2 “or the Resolution Trust Corporation”.

3 (e) Amendments to Sections 8 and 9.—Sections 8 and 9 of the Home Owners’ Loan Act
4 (12 U.S.C. 11466a, 1467) are each amended by striking “Director” each place such term appears
5 and inserting “Comptroller of the Currency”.

6 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) Definitions.—Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is
8 amended—

9 (A) by striking paragraph (1) and (3); and

10 (B) by redesignating paragraphs (2), (4), (5), (6), (7), (8) and (9) as paragraphs
11 (1), (2), (3), (4), (5), (6), (7), and (8), respectively.

12 (2) SECTION 3.—

13 (A) The heading for section 3 of the Home Owners’ Loan Act is amended by
14 striking “**DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION**” and inserting “**DIVISION OF**
15 **THRIFT SUPERVISION**”.

16 (B) The heading for subsection (e) of section (3) of the Home Owners’ Loan Act
17 is amended by striking “DIRECTOR” and inserting “COMPTROLLER OF THE CURRENCY”.

18 (3) SECTION 5.—

19 (A) The heading for paragraph (2)(E)(ii) of section 5(d) of the Home Owners’
20 Loan Act and the heading for paragraph (3)(B) of such section are each amended by striking “OR
21 RTC”.

22 (g) Clerical Amendment.—The table of contents section for the Home Owners’ Loan Act
23 is amended by striking the item relating to section 3 and inserting the following new item:

1 “Sec. 3. Division of Thrift Supervision.”.

2 **SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.**

3 (a) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes of the United
4 States (12 U.S.C. 1) is amended to read as follows:

5 “SEC. 324. There shall be in the Department of the Treasury a bureau, the chief officer
6 of which bureau shall be called the Comptroller of the Currency, and shall perform his or her
7 duties under the general direction of the Secretary of the Treasury. The Comptroller of the
8 Currency shall have the same authority over matters as were vested in the Office of Thrift
9 Supervision or its Director on the day before the date of enactment of the Financial Stability
10 Improvement Act of 2009. The Secretary of the Treasury may not delay or prevent the issuance
11 of any rule or the promulgation of any regulation by the Comptroller of the Currency.”.

12 (b) Amendments to Section 327.—Section 327 of the Revised Statutes of the United
13 States (12 U.S.C. 4) is amended to read as follows:

14 “SEC. 327 DEPUTY COMPTROLLERS.

15 “(A) APPOINTMENT.—The Secretary of the Treasury shall appoint no more than 5 Deputy
16 Comptrollers of the Currency—

17 “(1) 1 of whom shall be designated First Deputy Comptroller of the Currency; and

18 “(2) 1 of whom shall be designated the Deputy Comptroller of the Division of Thrift
19 Supervision.

20 “(b) PAY.—The Secretary of the Treasury shall fix the compensation of the Deputy
21 Comptrollers of the Currency and provide such other benefits as the Secretary may determine to
22 be appropriate.

1 “(c) OATH OF OFFICE; DUTIES.—Each Deputy Comptroller shall take the oath of office
2 and shall perform such duties as the Comptroller of the Currency shall direct.

3 “(d) SERVICE AS ACTING COMPTROLLER.—During a vacancy in the office or during the
4 absence or disability of the Comptroller, each Deputy Comptroller shall possess the power and
5 perform the duties attached by law to the Office of the Comptroller under such order of
6 succession following the First Deputy Comptroller as the Comptroller shall direct.”.

7 (c) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United
8 States (12 U.S.C. 11) is amended by inserting “or any Federal savings association” before the
9 period at the end.

10 (d) AMENDMENT TO SECTION 481.— The fourth sentence of the second undesignated
11 paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481) is
12 amended by striking “Secretary of the Treasury;” and all that follows through the end of the
13 sentence, and inserting “Secretary of the Treasury; the employment and compensation of
14 examiners, chief examiners, reviewing examiners, assistant examiners, and of the other
15 employees of the office of the Comptroller of the Currency whose compensation is and shall be
16 paid from assessments on banks or affiliates thereof or from other fees or charges imposed
17 pursuant to this subchapter shall be set and adjusted pursuant to chapter 71 of title five, United
18 States Code and without regard to the provisions of other laws applicable to officers or
19 employees of the United States.”

20 (e) AMENDMENT TO SECTION 482.—The first sentence in the first undesignated paragraph
21 of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 482) is amended by
22 inserting “pursuant to chapter 71 of title five, United States Code,” after “shall,”.

23 **SEC. 1204. POWER AND DUTIES TRANSFERRED.**

1 (a) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

2 (1) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this subtitle, all
3 functions of the Director of the Office of Thrift Supervision are transferred to the Office
4 of the Comptroller of the Currency.

5 (2) COMPTROLLER’S AUTHORITY.—Except as otherwise provided in this subtitle,
6 the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties
7 that were vested in the Director of the Office of Thrift Supervision under Federal law,
8 including the Home Owners’ Loan Act, on the day before the transfer date.

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

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

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

18 (b) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3 of the Federal
19 Deposit Insurance Act (12 U.S.C. 1813) is amended in subsection (q)—

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

21 “(1) the Comptroller of the Currency in the case of any national bank, Federal savings
22 association or any Federal branch or agency of a foreign bank;” and

23 (2) by amending paragraph (3) to read as follows:

1 “(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured
2 bank, a State savings association or a foreign bank having an insured branch.”; and

3 (3) by striking paragraph (4).

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

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

10 **SEC. 1205. TRANSFER DATE.**

11 (a) IN GENERAL.—Except as provided in subsection (b), the date for the transfer of
12 functions to the Office of the Comptroller of the Currency and the Corporation under section
13 1204 shall be 1 year after the date of enactment of this Act.

14 (b) EXTENSION PERMITTED.—

15 (1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of
16 the Currency and the Director of the Office of Thrift Supervision, may designate a
17 calendar date for the transfer of functions of the Office of Thrift Supervision to the Office
18 of the Comptroller of the Currency, and the Corporation under section 1204 that is later
19 than 1 year after the date of enactment of this Act if the Secretary—

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

23 (i) a written determination that orderly implementation of this title

1 is not feasible on the date that is 1 year after the date of enactment of this
2 Act;

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

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

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

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

11 (3) EFFECT ON REFERENCES TO “TRANSFER DATE”.—If the Secretary takes the
12 actions provided in paragraph (1) for designating a date for the transfer of functions to the
13 Office of the Comptroller of the Currency, and the Corporation under section 1204,
14 references in this title to “transfer date” shall mean the date designated by the Secretary.

15 **SEC. 1206. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

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

18 **SEC. 1207. SAVINGS PROVISIONS.**

19 (a) OFFICE OF THRIFT SUPERVISION.—

20 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section
21 1204(a)(1) and 1206 shall not affect the validity of any right, duty, or obligation of the
22 United States, the Director of the Office of Thrift Supervision, the Office of Thrift
23 Supervision, or any other person, that existed on the day before the transfer date.

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

4 (A) for any action or proceeding arising out of a function of the Director
5 of the Office of Thrift Supervision transferred to the Comptroller of the Currency
6 by this title, the Comptroller of the Currency or the Office of the Comptroller of
7 the Currency shall be substituted for the Director of the Office of Thrift
8 Supervision or the Office of Thrift Supervision, as the case may be, as a party to
9 the action or proceeding as of the transfer date; or

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

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

23 (1) the Office of the Comptroller of the Currency, in the case of a function

1 of the Director of the Office of Thrift Supervision transferred to the Comptroller
2 of the Currency, until modified, terminated, set aside, or superseded in accordance
3 with applicable law by the Office of the Comptroller of the Currency, by any
4 court of competent jurisdiction, or by operation of law; or

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

9 (d) IDENTIFICATION OF REGULATIONS CONTINUED.—

10 (1) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later
11 than the transfer date, the Comptroller of the Currency shall—

12 (A) after consultation with the Chairperson of the Corporation, identify the
13 regulations continued under subsection (c) that will be enforced by the Office of
14 the Comptroller of the Currency; and

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

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

18 (A) after consultation with the Office of the Comptroller of the Currency,
19 identify the regulations continued under subsection (c) that will be enforced by
20 the Corporation; and

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

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

23 (1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift

1 Supervision, which that agency, in performing functions transferred by this title, has
2 proposed before the transfer date but has not published as a final regulation before that
3 date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the
4 Currency, or the Corporation, as appropriate, according to its terms.

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

10 **SEC. 1208. REGULATIONS AND ORDERS.**

11 In addition to any powers transferred to the Comptroller of the Currency by this title, the
12 Comptroller of the Currency may prescribe such regulations and issue such orders as the
13 Comptroller of the Currency determines to be appropriate to carry out this title and the powers
14 and duties transferred to the Comptroller of the Currency by this title.

15 **SEC. 1209. COORDINATION OF TRANSITION ACTIVITIES.**

16 Before the transfer date, the Comptroller of the Currency shall—

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

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

20 (A) the amount of funds necessary to pay any expenses associated with the
21 transfer of functions (including expenses for personnel, property, and
22 administrative services) during the period beginning on the date of enactment of
23 this Act and ending on the transfer date;

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

3 (C) what property and administrative services are necessary to support the
4 Office of the Comptroller of the Currency during the period beginning on the date
5 of enactment of this Act and ending on the transfer date; and

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

8 **SEC. 1210. INTERIM RESPONSIBILITIES OF OFFICE OF THE COMPTROLLER OF**
9 **THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.**

10 (a) IN GENERAL.—When requested by the Comptroller of the Currency to do so before
11 the transfer date, the Office of Thrift Supervision shall—

12 (1) pay to the Comptroller of the Currency, from funds obtained by the Office of
13 Thrift Supervision through assessments, fees, or other charges that the Office of Thrift
14 Supervision is authorized by law to impose, such amounts that the Comptroller of the
15 Currency determines to be necessary under section 1209(2)(A);

16 (2) detail to the Office of the Comptroller of the Currency such personnel as the
17 Comptroller of the Currency determines to be appropriate under section 1209(2)(B); and

18 (3) make available to the Office of the Comptroller of the Currency such property
19 and provide the Office of the Comptroller of the Currency such administrative services as
20 the Comptroller of the Currency determines to be necessary under section 1209(2)(C).

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

1 **SEC. 1211. EMPLOYEES TRANSFERRED.**

2 (a) IN GENERAL.—

3 (1) OTS EMPLOYEES.—

4 (A) IN GENERAL.—All employees of the Office of Thrift Supervision shall
5 be transferred to either the Comptroller of the Currency or the Corporation for
6 employment.

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

8 The Director of the Office of Thrift Supervision, the Comptroller of the Currency,
9 and the Chairperson of the Corporation shall—

10 (i) jointly determine the number of employees of the Office of
11 Thrift Supervision necessary to perform or support—

12 (I) the functions of the Office of Thrift Supervision that are
13 transferred to the Office of the Comptroller of the Currency by this
14 title; and

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

17 (iii) consistent with the numbers determined under clause (ii),
18 jointly identify employees of the Office of Thrift Supervision for transfer
19 to the Office of the Comptroller of the Currency or the Corporation in a
20 manner that the Director of the Office of Thrift Supervision, the
21 Comptroller of the Currency, and the Chairperson of the Corporation, in
22 their discretion, deem equitable.

23 (2) TRANSFER OF EMPLOYEES PERFORMING CONSUMER FINANCIAL PROTECTION

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

5 (3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

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

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

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

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

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

21 (c) TRANSFER OF FUNCTION.—

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

1 5, United States Code.

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

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

9 (e) EQUAL STATUS AND TENURE POSITIONS.—Each employee transferred from the Office
10 of Thrift Supervision shall be placed in a position at either the Office of the Comptroller of the
11 Currency or the Corporation with the same status and tenure as he or she held on the day before
12 the transfer date.

13 (f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—Examiners transferred to the Office
14 of the Comptroller of the Currency or the Corporation shall not be subject to any additional
15 certification requirements before being placed in a comparable examiner's position at the Office
16 of the Comptroller of the Currency or the Corporation examining the same types of institutions
17 as they examined before they were transferred.

18 (g) PERSONNEL ACTIONS LIMITED.—

19 (1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each employee
20 transferred from the Office of Thrift Supervision holding a permanent position on the day
21 before the transfer date shall not, during the 1-year period beginning on the transfer date,
22 be involuntarily separated, or involuntarily reassigned outside his or her locality pay area
23 as defined by the Office of Personnel Management.

1 (2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the
2 Comptroller of the Currency or the Corporation to—

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

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

7 (h) PAY.—

8 (1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each employee
9 transferred from the Office of Thrift Supervision shall, during the 1-year period
10 beginning on the transfer date, receive pay at a rate not less than the basic rate of pay
11 (including any geographic differential) that the employee received during the 1-year
12 period immediately before the transfer.

13 (2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the
14 Comptroller of the Currency or the Corporation to reduce a transferred employee's rate of
15 basic pay—

16 (A) for cause;

17 (B) for unacceptable performance; or

18 (C) with the employee's consent.

19 (3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred
20 employee only while that employee remains employed by the Office of the Comptroller
21 of the Currency or the Corporation.

22 (4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the
23 Office of the Comptroller of the Currency or the Corporation to increase a transferred

1 employee's pay.

2 (i) BENEFITS.—

3 (1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

4 (A) IN GENERAL.—

5 (i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each
6 employee transferred from the Office of Thrift Supervision may remain
7 enrolled in his or her existing retirement plan or plans as long as he or she
8 remains employed by the Office of the Comptroller of the Currency.

9 (ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller
10 of the Currency or the Corporation shall pay any employer contributions
11 to the existing retirement plan of each employee transferred from the
12 Office of Thrift Supervision as required under that plan.

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

19 (2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

20 (A) DURING 1ST YEAR.—

21 (i) EXISTING PLANS CONTINUE.—Each transferred employee may,
22 for 1 year after the transfer date, retain membership in any other employee
23 benefit program of the Office of Thrift Supervision, including a dental,

1 vision, long term care, or life insurance program, to which the employee
2 belonged on the day before the transfer date.

3 (ii) EMPLOYER’S CONTRIBUTION.—The Office of the Comptroller
4 of the Currency or the Corporation shall pay any employer cost in
5 continuing to extend coverage in the benefit program to the employee as
6 required under that program or negotiated agreements.

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

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

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

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

22 (C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year
23 period beginning on the transfer date, the Office of the Comptroller of the

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

10 (D) EMPLOYEE'S CONTRIBUTION.—

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

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

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

1 Management and Budget, to be necessary to reimburse the Fund for the
2 cost to the Fund of providing benefits under this subparagraph not
3 otherwise paid for by the employee under clause (i).

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

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

14 (ii) EMPLOYEE'S CONTRIBUTION.—

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

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

23 (III) FUNDS TRANSFER.—The Office of the Comptroller of

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

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

18 (j) EQUITABLE TREATMENT.—In administering the provisions of this section, the Office
19 of the Comptroller of the Currency and the Corporation—

20 (1) shall take no action that would unfairly disadvantage transferred employees
21 relative to other employees of the Office of the Comptroller of the Currency based on
22 their prior employment by the Office of Thrift Supervision;

23 (2) may take such action as is appropriate in individual cases so that employees

1 transferred under this section receive equitable treatment, with respect to those
2 employees' status, tenure, pay, benefits (other than benefits under programs administered
3 by the Office of Personnel Management), and accrued leave or vacation time, for prior
4 periods of service with any Federal agency.

5 **SEC. 1212. PROPERTY TRANSFERRED.**

6 (a) IN GENERAL.— Not later than 90 days after the transfer date, all property of the Office
7 of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the
8 Corporation, allocated in a manner consistent with section 1211(a).

9 (b) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—All contracts, agreements, leases,
10 licenses, permits, and similar arrangements relating to property transferred to the Office of the
11 Comptroller of the Currency or the Corporation by this section shall be transferred to the Office
12 of the Comptroller of the Currency or the Corporation together with that property.

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

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

20 **SEC. 1213. FUNDS TRANSFERRED.**

21 Except to the extent needed to dispose of affairs under section 1214, all funds that, on the
22 day before the transfer date, are available to the Director of the Office of Thrift Supervision to
23 pay the expenses of the Office of Thrift Supervision shall be transferred to the Office of the

1 Comptroller of the Currency or the Corporation, allocated in a manner consistent with section
2 1211(a), on the transfer date.

3 **SEC. 1214. DISPOSITION OF AFFAIRS.**

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

6 (1) shall, solely for the purpose of winding up the affairs of the agency related to
7 any function transferred to the Office of the Comptroller of the Currency or the
8 Corporation by this title—

9 (A) manage any employees of the Office of Thrift Supervision and
10 provide for the payment of the compensation and benefits of any such employees
11 that accrue before the transfer date; and

12 (B) manage any property of the Office of Thrift Supervision until the
13 property is transferred under section 1212; and

14 (2) may take any other action necessary to wind up the affairs of the Office of
15 Thrift Supervision relating to the transferred functions.

16 (b) AUTHORITY AND STATUS OF DIRECTOR.—

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

22 (2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office
23 of Thrift Supervision shall, during the 90-day period beginning on the transfer date,

1 continue to be—

2 (A) treated as an officer of the United States; and

3 (B) entitled to receive compensation at the same annual rate of basic pay

4 that he or she was receiving on the day before the transfer date.

5 **SEC. 1215. CONTINUATION OF SERVICES.**

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

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

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

14 **SEC. 1216. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES**

15 (a) Section 2 of the Home Owners Loan Act (12 U.S.C. 1462) is amended in paragraph (1)
16 by striking ““DIRECTOR”—.The term “Director” means the Director of the Office of Thrift
17 Supervision.” and inserting ““COMPTROLLER”—.The term “Comptroller” means the Comptroller
18 of the Currency.”

19 (b) Section 10 of the Home Owners Loan Act (12 U.S.C. 1467a) is amended as follows:

20 (1) In subsection (a) (1)(A) by deleting “Director” and inserting “Comptroller of the
21 Currency”;

22 (2) In subsection (m) as follows:

23 (A) in paragraph (2) by striking “DIRECTOR” and inserting “COMPTROLLER”;

1 (B) in paragraph (2) by striking “Director may grant” and inserting “Comptroller of
2 the Currency may grant”;

3 (C) in paragraph (2) by striking “the Director deems” and inserting “the Comptroller
4 deems”;

5 (D) in subparagraph (2)(A) by striking “Director” and inserting “Comptroller”

6 (E) in subparagraph (2)(B) by striking “Director” and inserting “Comptroller”

7 (F) in subparagraph (2)(B)(iii) by striking “Director” and inserting “Comptroller”

8 (G) in paragraph (4)(D) by striking “Director” and inserting “Comptroller”

9 (H) in paragraph (4)(E) by striking “Director” and inserting “Comptroller”

10 (I) in paragraph (7)(B) by striking “Director” and inserting “Comptroller”

11 (3) In subsection (o) as follows:

12 (A) in subparagraph (3) in the heading by striking “DIRECTOR” and inserting
13 “BOARD”;

14 (B) in subparagraph (3)(A) by striking “Director” and inserting “Board”;

15 (C) in subparagraph (3)(B) by striking “Director” and inserting “Board”;

16 (D) in subparagraph (3)(C) by striking “Director” and inserting “Board”;

17 (E) in subparagraph (3)(D) by striking “Director” and inserting “Comptroller”

18 (F) in paragraph (7) by deleting “chartered by the Director” and inserting “chartered
19 by the Comptroller;

20 (G) in paragraph (7) by deleting “regulations as the Director may” and inserting
21 “regulations as the Board may”

22 (4) by deleting subsections “(a)” through “(n)”, and “(p)” through “(t)”, and redesignating
23 current subsections “(m)” and “(o)” as “(a)” and “(b)”.

1 **SEC. 1217. PRACTICES OF CERTAIN MUTUAL THRIFT HOLDING COMPANIES**
2 **PRESERVED.**

3 (a) TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.— Section
4 3(g) of the Bank Holding Company Act (12 U.S. C. 1842(g)) is amended—

5 (1) by inserting new paragraphs (3) through (7) as follows:

6 “(3) DECLARATION OF DIVIDENDS.— Every subsidiary savings association of a
7 mutual holding company shall give the Board not less than 30 days’ advance notice
8 of the proposed declaration by its directors of any dividend on its guaranty,
9 permanent, or other nonwithdrawable stock. Such notice period shall commence to
10 run from the date of receipt of such notice by the Board. Any such dividend declared
11 within such period, or without the giving of such notice to the Board, shall be invalid
12 and shall confer no rights or benefits upon the holder of any such stock.

13 “(4) WAIVER OF DIVIDENDS.—Any mutual thrift holding company organized
14 under section 10(b) of the Home Owners’ Loan Act shall be permitted to waive such
15 company’s right to receive any dividend declared by a subsidiary, if—

16 “(A) no insider of the mutual holding company, associate of an insider, or tax-
17 qualified or non-tax-qualified employee stock benefit plan of the mutual holding
18 company holds any share of the stock in the class of stock to which the waiver
19 would apply;

20 “(B) the mutual holding company provides the Board with written notice of its
21 intent to waive its right to receive dividends 30 days prior to the proposed date of
22 payment of the dividend; and

23 “(C) the Board does not object.

1 “(5) STANDARDS FOR WAIVER OF DIVIDEND.—The Board shall not object to a
2 notice of intent to waive dividends under paragraph (4) if—

3 “(A) the waiver would not be detrimental to the safe and sound operation
4 of the savings association; and

5 “(B) the board of directors of the mutual holding company expressly
6 determines that a waiver of the dividend by the mutual holding company is
7 consistent with the directors’ fiduciary duties to the mutual members of such
8 company.

9 “(6) RESOLUTION INCLUDED IN WAIVER NOTICE.—A dividend waiver notice shall
10 include a copy of the resolution of the board of directors of the mutual holding company,
11 in form and substance satisfactory to the Board, together with any supporting materials
12 relied upon by the board of directors, concluding that the proposed dividend waiver is
13 consistent with the board of director’s fiduciary duties to the mutual members of the
14 mutual holding company.”

15 “(7) VALUATION.— The Board will not consider waived dividends in determining
16 an appropriate exchange ratio in the event of a full conversion to stock form.

17 **SEC. 1218. COMPOSITION OF BOARD OF DIRECTORS OF THE FEDERAL**
18 **DEPOSIT INSURANCE CORPORATION.**

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

20 (1) in subsection (a)(1)—

21 (A) in subparagraph (B), by striking “Director of the Office of Thrift
22 Supervision” and inserting “Chairman of the Board of Governors of the Federal
23 Reserve System, or such other member of the Board of Governors as the

1 Chairman of the Board of Governors shall designate”;

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

3 “(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the
4 Comptroller of the Currency and pending the appointment of a successor, or during the
5 absence or disability of the Comptroller of the Currency, the acting Comptroller of the
6 Currency shall be a member of the Board of Directors in the place of the Comptroller of
7 the Currency.”; and

8 (2) in subsection (f)(2), by striking “or of the Office of Thrift Supervision”.

9 CONFORMING AMENDMENTS

10 SEC. 1219. AMENDMENTS TO SECTION 3.

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

12 (1) in subsection (b)(1)(C) (relating to the definition of the term “savings
13 association”), by striking “Director of the Office of Thrift Supervision” and inserting
14 “Comptroller of the Currency”;

15 (2) in subsection (l)(5) (relating to the definition of the term “deposit”), in the
16 introductory text, by striking “, Director of the Office of Thrift Supervision,” and
17 inserting “, and”;

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

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

21 “(1) the Comptroller of the Currency, in the case of any national bank, any Federal
22 branch or agency of a foreign bank, or any savings association or savings and loan holding
23 company;”;

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

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

2 (D) by amending paragraph (3) to read as follows:

3 “(3) the Federal Deposit Insurance Corporation in the case of a State nonmember
4 insured bank, State savings association, or a foreign bank having an insured branch.”

5 and

6 (E) by striking paragraph (4).

7 (4) in subsection (z) (relating to the definition of the term “Federal banking
8 agency”), by striking “the Director of the Office of Thrift Supervision,”.

9 **SEC. 1220. AMENDMENTS TO SECTION 7.**

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

11 (1) in paragraph (2)—

12 (A) in subparagraph (A)—

13 (i) in the first sentence, by striking “the Director of the Office of
14 Thrift Supervision”;

15 (ii) in the second sentence, by striking “the Director of the Office
16 of Thrift Supervision”;

17 (B) in subparagraph (B), by striking “Comptroller of the Currency, the
18 Board of Governors of the Federal Reserve System, and the Director of the Office
19 of Thrift Supervision,” and inserting “Comptroller of the Currency and the Board
20 of Governors of the Federal Reserve System,”;

21 (2) in paragraph (3), in the first sentence, by striking “Comptroller of the
22 Currency, the Chairman of the Board of Governors of the Federal Reserve System, and
23 the Director of the Office of Thrift Supervision” and inserting “Comptroller of the
24 Currency and the Chairman of the Board of Governors of the Federal Reserve System”;

1 (3) in paragraph (7), by striking “Director of the Office of Thrift Supervision,”

2 **SEC. 1221. AMENDMENTS TO SECTION 8.**

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

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

5 (A) by striking “Director of the Office of Thrift Supervision” each place it
6 appears and inserting “Comptroller of the Currency”;

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

10 (4) in subsection (o)—

11 (A) by striking “Director of the Office of Thrift Supervision” and inserting
12 “Comptroller of the Currency”;

13 (5) in subsection (w)(3)(A), by striking “Office of Thrift Supervision” and
14 inserting “Office of the Comptroller of the Currency”.

15 **SEC. 1222. AMENDMENTS TO SECTION 11.**

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

17 (1) in subsection (c)—

18 (A) in paragraph (6)—

19 (i) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT
20 SUPERVISION” and inserting “COMPTROLLER OF THE CURRENCY”;

21 (ii) in subparagraph (A), by striking “Director of the Office of
22 Thrift Supervision” and inserting “Comptroller of the Currency”;

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

1 Thrift Supervision” and inserting “Comptroller of the Currency”;

2 (2) in subsection (d)—

3 (A) in paragraph (2)(F)(i), by striking “Director of the Office of Thrift
4 Supervision” and inserting “Comptroller of the Currency”;

5 (B) in paragraph (17)(A)—

6 (i) by striking “Comptroller of the Currency”; and

7 (B) by striking “appropriate”;

8 (C) in paragraph (18)(B), by striking “or the Director of the Office of
9 Thrift Supervision”;

10 **SEC. 1223. AMENDMENTS TO SECTION 13.**

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

14 **SEC. 1224. AMENDMENTS TO SECTION 18.**

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

16 (1) in subsection (c)—

17 (A) in paragraph (2)—

18 (i) in subparagraph (A), by striking “bank;” and inserting “bank or
19 a savings association;”;

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

22 (iii) in subparagraph (C), by striking “bank (except a savings bank
23 supervised by the Director of the Office of Thrift Supervision); and” and
24 inserting “bank or State savings association.”; and

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

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

3 and inserting “Comptroller of the Currency”;

4 (3) in subsection (i)—

5 (A) in paragraph (2)—

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

7 “(B) the Corporation, if the resulting institution is to be a State nonmember

8 insured bank or insured State savings association.”; and

9 (ii) by striking subparagraph (C);

10 (4) in subsection (m)—

11 (A) in paragraph (1)—

12 (i) in subparagraph (A), by striking “Director of the Office of
13 Thrift Supervision” and inserting “Comptroller of the Currency”;

14 (ii) in subparagraph (B), by striking “Director of the Office of
15 Thrift Supervision” and inserting “Comptroller of the Currency”;

16 (B) in paragraph (2)—

17 (i) in subparagraph (A), by striking “Director of the Office of
18 Thrift Supervision” and inserting “Comptroller of the Currency”;

19 (ii) in subparagraph (B), by striking “Director of the Office of
20 Thrift Supervision” each place it appears and inserting “Comptroller of the
21 Currency”

22 (C) in paragraph (3)—

23 (i) in subparagraph (A), by striking “Director of the Office of
24 Thrift Supervision” and inserting “Comptroller of the Currency”; and

1 (ii) in subparagraph (B), by striking “Office of Thrift Supervision”
2 and inserting “Comptroller of the Currency”.

3 **SEC. 1225. AMENDMENTS TO SECTION 28.**

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

5 (1) in subsection (e)—

6 (A) in paragraph (2)—

7 (i) in subparagraph (A)(ii), by striking “Director of the Office of
8 Thrift Supervision” and inserting “Comptroller of the Currency”;

9 (ii) in subparagraph (C), by striking “Director of the Office of
10 Thrift Supervision” and inserting “Comptroller of the Currency”;

11 (iii) in subparagraph (F), by striking “Director of the Office of
12 Thrift Supervision” and inserting “Comptroller of the Currency”;

13 (B) in paragraph (3)—

14 (i) in subparagraph (A), by striking “Director of the Office of
15 Thrift Supervision” and inserting “Comptroller of the Currency”;

16 (ii) in subparagraph (B), by striking “Director of the Office of
17 Thrift Supervision” and inserting “Comptroller of the Currency”;

18 (2) in subsection (h)(2), by striking “Director of the Office of Thrift Supervision”
19 and inserting “Comptroller of the Currency”.

20 **SEC. 1226. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION**

21 **PARITY ACT OF 1982.**

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

1 (1) by striking “Comptroller of the Currency,” and inserting “Comptroller of the
2 Currency and” ; and

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

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

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

7 “(1) with respect to banks, savings associations, mutual savings banks, and
8 savings banks, only to transactions made in accordance with regulations governing
9 alternative mortgage transactions as issued by the Comptroller of the Currency to the
10 extent that such regulations are authorized by rulemaking authority granted to the
11 Comptroller of the Currency under laws other than this section.”; and

12 (2) by striking paragraph (3).

13 **SEC. 1227. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.**

14 (a) AMENDMENTS TO SECTION 4.—Section 4 of the Bank Holding Company Act of 1956
15 (12 U.S.C. 1843) is amended—

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

17 (i) by striking “Resolution Trust Corporation”; and

18 **SEC. 1228. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.**

19 Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

20 (1) in paragraph (1) by striking “national banks,” and inserting “national banks and
21 federal savings associations.”;

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

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

1 (4) by striking paragraph (4).

2 **SEC. 1229. AMENDMENTS TO THE BANK SERVICE CORPORATION ACT.**

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

5 (1) in paragraph (4), by striking “insured bank,” and inserting “insured bank or”

6 (2) by striking “Office of Thrift Supervision” and inserting “Office of the
7 Comptroller of the Currency”; and

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

9 **SEC. 1230. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.**

10 Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended
11 in subsection (1)—

12 (1) in paragraph (A) by striking “national banks” and inserting “national banks or
13 savings associations (the deposits of which are insured by the Federal Deposit Insurance
14 Corporation)”;

15 (2) in paragraph (B) by striking “and bank holding companies;” and inserting “,
16 bank holding companies and savings and loan holding companies;”

17 (3) by striking paragraph (D); and

18 **SEC. 1231. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT
19 INTERLOCKS ACT.**

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

22 (1) in paragraph (1) by striking “national banks,” and inserting “national banks
23 and Federal savings associations (the deposits of which are insured by the Federal

1 Deposit Insurance Corporation),” ;

2 (2) by striking paragraph (4);

3 (3) in paragraph by striking “and bank holding companies,” and inserting “, bank
4 holding companies or savings and loan holding companies,”

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

6 (b) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution

7 Management Interlocks Act (12 U.S.C. 3207) is amended—

8 (1) in paragraph (1), by striking “national banks,” and inserting “national banks
9 and Federal savings associations (the deposits of which are insured by the Federal

10 Deposit Insurance Corporation),” ;

11 (2) by striking paragraph (4);

12 (3) in paragraph by striking “and bank holding companies,” and inserting “, bank
13 holding companies or savings and loan holding companies,”

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

15 (f) AMENDMENT TO SECTION 210.—Subsection 210(a) of the Depository Institution

16 Management Interlocks Act (12 U.S.C. 3208(a)) is amended by striking “his” and inserting “his
17 or her”.

18 **SEC. 1232. AMENDMENTS TO THE EMERGENCY HOMEOWNER’S RELIEF ACT.**

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

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

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

23 **SEC. 1233. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.**

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

3 (1) in paragraph (1)(A), by striking “and Federal branches and Federal agencies of
4 foreign banks,” and inserting “, Federal branches and Federal agencies of foreign banks,
5 or a savings association the deposits of which are insured by the Federal Deposit
6 Insurance Corporation;”;

7 (2) by striking paragraph (2); and

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

9 **SEC. 1234. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.**

10 (a) AMENDMENTS TO SECTION 206.—Section 206 of the Federal Credit Union Act (12
11 U.S.C. 1786) is amended—

12 (1) in subsection (g)(7)—

13 (A) in subparagraph (A)—

14 (i) in clause (vi)—

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

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

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

19 (ii) by striking clause (vii)

20 (IV) in Subparagraph (D), clause (iv), by striking at the end

21 “; and” and inserting a period; and

22 (V) striking clause (v).

23 **SEC. 1235. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS**

1 **EXAMINATION COUNCIL ACT OF 1978.**

2 (a) AMENDMENT TO SECTION 1002.—Section 1002 of the Federal Financial Institutions
3 Examination Council Act of 1978 (12 U.S.C. 3301) is amended—

4 (1) by striking “Federal Home Loan Bank Board” and inserting “Federal Housing
5 Finance Agency”.

6 (b) AMENDMENT TO SECTION 1003.—Section 1003 of the Federal Financial Institutions
7 Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

8 (1) in paragraph (1) by striking “the Office of Thrift Supervision

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

11 (1) by striking paragraph (4); and

12 (2) by renumbering paragraph (5) as paragraph (4).

13 **SEC. 1236. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.**

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

16 (1) by striking “Director of the Office of Thrift Supervision” each place it appears
17 and inserting “Comptroller of the Currency”;

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

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

21 (b) AMENDMENTS TO SECTION 21A.—Section 21A of the Federal Home Loan Bank Act
22 (12 U.S.C. 1441a) is repealed.

23 **SEC. 1237. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

1 (a) AMENDMENTS TO SECTION 19.—Section 19 of the Federal Reserve Act (12 U.S.C.
2 461(b)) is amended—

3 (1) in subsection (b)(1)(F) by striking “the Director of the Office of Thrift
4 Supervision” and inserting “the Comptroller of the Currency”.

5 (B) in subsection (b)(4)(B), by striking “the Director of the Office of
6 Thrift Supervision” and inserting “the Comptroller of the Currency”.

7 **SEC. 1238. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM,**
8 **RECOVERY, AND ENFORCEMENT ACT OF 1989.**

9 (a) AMENDMENTS TO SECTION 302.—Section 302(1) of the Financial Institutions Reform,
10 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1467a nt.) is amended by striking “Director
11 of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

12 (b) AMENDMENT TO SECTION 305.—Section 305 of the Financial Institutions Reform,
13 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1464 nt.) is amended—

14 (1) in subsection (b)—

15 (A) in paragraph (1)—

16 (i) by striking “Director of the Office of Thrift Supervision” and
17 inserting “Comptroller of the Currency”; and

18 (c) AMENDMENT TO SECTION 308.—Subsection 308(a) of the Financial Institutions
19 Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 nt.) is amended by striking
20 “Director of the Office of Supervision” and “Comptroller of the Currency”.

21 (d) AMENDMENTS TO SECTION 402.—Section 402 of the Financial Institutions Reform,
22 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 nt.) is amended—

23 (1) in subsection (a), by striking “Director of the Office of Thrift Supervision”

1 and inserting “Comptroller of the Currency”;

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

3 and inserting “Comptroller of the Currency”;

4 (3) in subsection (e)—

5 (A) in paragraph (1), by striking “the Office of Thrift Supervision” and
6 inserting “Office of the Comptroller of the Currency”;

7 (B) in paragraph (2), by striking “Director of the Office of Thrift
8 Supervision” each place it appears and inserting “Comptroller of the Currency”;

9 (C) in paragraph (3), by striking “Director of the Office of Thrift
10 Supervision” and inserting “Comptroller of the Currency”; and

11 (D) in paragraph (4), by striking “Director of the Office of Thrift
12 Supervision” and inserting “Comptroller of the Currency”.

13 (e) AMENDMENT TO SECTION 1103.—Section 1103(a) of the Financial Institutions
14 Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended by striking
15 “and the Resolution Trust Corporation”.

16 (f) AMENDMENTS TO SECTION 1205.—Subsection 1205(b) of the Financial Institutions
17 Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 nt.) is amended—

18 (1) in paragraph (1)—

19 (A) in subparagraph (B), by striking “Director of the Office of Thrift
20 Supervision” and inserting “Comptroller of the Currency”;

21 (B) by striking subparagraph (D);

22 (C) by redesignating subparagraphs (E) and (F) as paragraphs (D) and (E),
23 respectively;

1 (2) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph
2 (1)(E)”; and

3 (3) in paragraph (5), by striking “through (E)” and inserting “through (D)”.

4 (g) AMENDMENTS TO SECTION 1206.—Section 1206 of the Financial Institutions Reform,
5 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended—

6 (1) by striking “the Thrift Depositor Protection Oversight Board of the Resolution
7 Trust Corporation”;

8 (2) by inserting “and” after “the Federal Housing Finance Board” and before “the
9 Farm Credit Administration”; and

10 (3) by striking “, and the Office of Thrift Supervision”.

11 (h) AMENDMENTS TO SECTION 1216.—Section 1216 of the Financial Institutions Reform,
12 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

13 (1) in subsection (a)—

14 (A) by striking paragraphs (2), (5), and (6); and

15 (C) by redesignating paragraphs (3), and (4), as paragraphs (2), and (3),
16 respectively;

17 (2) in subsection (c)—

18 (A) by striking “the Director of the Office of Thrift Supervision,” and
19 inserting “, and”; and

20 (B) by striking “the Thrift Depositor protection Oversight Board of the
21 Resolution Trust Corporation, and the Resolution Trust Corporation”.

22 (3) in subsection (d)—

23 (A) by striking paragraphs (3), (5) and (6); and

1 (C) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4),
2 and (5), respectively.

3 **SEC. 1239. AMENDMENTS TO THE HOUSING ACT OF 1948.**

4 Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the
5 introductory text by striking “Director of the Office of Thrift Supervision” and inserting
6 “Comptroller of the Currency “.

7 **SEC. 1240. AMENDMENTS TO THE HOUSING AND COMMUNITY DEVELOPMENT**
8 **ACT OF 1992.**

9 (a) AMENDMENTS TO SECTION 543.—Section 543 of the Housing and Community
10 Development Act of 1992 (12 U.S.C. 1707 nt.) is amended—

11 (1) in subsection (c)(1)—

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

13 “(C) Comptroller of the Currency”; and

14 (B) by striking subparagraphs (D) through (F); and

15 (C) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and
16 (E), respectively;

17 (2) in subsection (f)—

18 (A) in paragraph (2)—

19 (i) by striking “the Office of Thrift Supervision,”; and

20 (ii) in subparagraph (D), by striking “Office of Thrift Supervision,”
21 and inserting “Comptroller of the Currency”;

22 (B) in paragraph (3)—

23 (i) by striking “the Office of Thrift Supervision,” and inserting

1 Comptroller of the Currency”; and

2 (ii) in subparagraph (D), by striking “Office of Thrift Supervision,
3 and inserting “Comptroller of the Currency”“.

4 (b) AMENDMENT TO SECTION 1315.—Section 1315(b) of the Housing and Community
5 Development Act of 1992 (12 U.S.C. 4515(b)) is amended by striking “the Federal Deposit
6 Insurance Corporation, and the Office of Thrift Supervision.” and inserting “and the Federal
7 Deposit Insurance Corporation.”.

8 (c) AMENDMENT TO SECTION 1317.—Section 1317(c) of the Housing and Community
9 Development Act of 1992 (12 U.S.C. 4517(c)) is amended—

10 (1) by striking “the Federal Deposit Insurance Corporation, or the Director of the
11 Office of Thrift Supervision” and inserting “or the Federal Deposit Insurance
12 Corporation.”

13 **SEC. 1241. AMENDMENTS TO THE HOUSING AND URBAN-RURAL RECOVERY**
14 **ACT OF 1983.**

15 Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p-1)
16 is amended in the first sentence—

17 (a) by striking “Federal Home Loan Bank Board” and inserting “Federal Housing
18 Finance Agency;”.

19 **SEC. 1242. AMENDMENTS TO THE NATIONAL HOUSING ACT.**

20 (a) AMENDMENTS TO SECTION 203.—Section 203(s) of the National Housing Act (12
21 U.S.C. 1709(s)) is amended—

22 (1) in paragraph (5), by revising the paragraph to read as follows:

1 if the mortgagee is a national bank, a subsidiary or affiliate of such a bank, a Federal savings
2 association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;

3 (2) in paragraph (7) by inserting “ or State savings association” after “State bank”;

4 and

5 (3) by striking paragraph (8).

6 **SEC. 1243. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF**
7 **1978.**

8 Section 11(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is
9 amended—

10 (1) by striking subparagraph (B); and

11 (2); by designating subparagraphs (C) through (I) as subparagraphs (B) through
12 (H).

13 **SEC. 1244. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY**
14 **DEFICIT CONTROL ACT OF 1985.**

15 (a) AMENDMENTS TO SECTION 255.—Section 255(g)(1)(A) of the Balanced Budget and
16 Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

17 (1) by striking “Director of the Office of Thrift Supervision”.

18 (b) AMENDMENTS TO SECTION 256.—Section 256(h)(4) of the Balanced Budget and
19 Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

20 (1) by striking subparagraphs (C) and (G); and

21 (2) by redesignating subparagraphs (D),(E), (F) and (H) as subparagraphs (C)
22 through (G), respectively.

23 **SEC. 1245. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.**

1 (a) AMENDMENTS TO SECTION 2539.—Section 2539(c)(2) of the Crime Control Act of
2 1990, Public Law 101-647, is amended—

3 (1) by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as
4 subparagraphs (F) through (G).

5 (b) AMENDMENT TO SECTION 2554.—Section 2554(b)(2) of the Crime Control Act of
6 1990, Public Law 101-647, is amended by striking “Director of the Office of Thrift Supervision”
7 and inserting “Comptroller of the Currency”.

8 **SEC. 1246. AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.**

9 Section 3(a)(5) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C.
10 4003(a)(5)) is amended—

11 (1) by striking “the Office of Thrift Supervision.”.

12 **SEC. 1247. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.**

13 (a) AMENDMENT TO SECTION 6.—Section 6(a)(3) of the Investment Company Act of
14 1940 (15 U.S.C. 80a-6(a)(3)) is amended by striking “Federal Savings and Loan Insurance
15 Corporation” and inserting “Comptroller of the Currency”.

16 **SEC. 1248. AMENDMENTS TO THE NEIGHBORHOOD REINVESTMENT
17 CORPORATION ACT.**

18 (a) Corporation Act, as amended (42 U.S.C. 8105(c)(3)) is amended—

19 (1) by striking the “Federal Home Loan Bank Board” and inserting “Federal
20 Housing Finance Agency”.

21 **SEC. 1249. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**

22 (a) AMENDMENTS TO SECTION 3.—Section 3 of the Securities Exchange Act of 1934 (15
23 U.S.C. 78c) is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (34)(A)—

3 (i) in clause (i), by striking “bank;” and inserting “bank, or a
4 savings association (as defined in section 3(b) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal
6 Deposit Insurance Corporation, a subsidiary or a department or division of any
7 such savings association, or a savings and loan holding;”;

8 (ii) by striking clause (iv); and

9 (iii) by redesignating clause (v) as clause (iv);

10 (C) in paragraph (B)—

11 (i) in clause(i), by striking “bank;” and inserting “bank, or a
12 savings association (as defined in section 3(b) of the Federal Deposit
13 Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by
14 the Federal Deposit Insurance Corporation, a subsidiary or a department or
15 division of any such savings association, or a savings and loan holding;”;

16 (ii) by striking clause (iv); and

17 (iii) by redesignating clause (v) as clause (iv);

18 (D) in paragraph (C)—

19 (i) in clause (i), by striking “bank;” and inserting “bank, or a
20 savings association (as defined in section 3(b) of the Federal Deposit
21 Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by
22 the Federal Deposit Insurance Corporation, a subsidiary or a department or
23 division of any such savings association, or a savings and loan holding;”;

- 1 (ii) by striking clause (iv); and
- 2 (iii) by redesignating clause (v) as clause (iv);
- 3 (E) in paragraph (F)—
- 4 (i) in clause (i), by striking “bank;” and inserting “or a savings
- 5 association (as defined in section 3(b) of the Federal Deposit Insurance
- 6 Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal
- 7 Deposit Insurance Corporation;”
- 8 (ii) by striking clause (ii); and
- 9 (iii) redesignating clauses (iii), (iv), and (v), as clauses (ii), (iii) and
- 10 (iv), respectively.

11 (b) AMENDMENTS TO SECTION 15C.—Section 15C of the Securities Exchange Act of

12 1934 (15 U.S.C. 78o-5) is amended in subsection (g)(1)—

13 (A) by striking “the Director of the Office of Thrift Supervision, the

14 Federal Savings and Loan Insurance Corporation;”.

15 **SEC. 1250. AMENDMENTS TO TITLE 18, UNITED STATES CODE**

16 (a) AMENDMENT TO SECTION 212.—Section 212(c)(2) of Title 18, United States Code (18

17 U.S.C. 212(c)(2)) is amended—

- 18 (1) by striking (C); and
- 19 (2) by relettering (D) through (H) as (C) through (G).

20 (b) AMENDMENT TO SECTION 657.—Section 657 of Title 18, United States Code (18

21 U.S.C. 657) is amended by striking “Office of Thrift Supervision, the Resolution Trust

22 Corporation”.

23 (c) AMENDMENT TO SECTION 981.—Section 981(a)(1)(D) of Title 18, United States Code

1 (18 U.S.C. 981(a)(1)(D)) is amended—

2 (1) by striking “Resolution Trust Corporation”; and

3 (2) by striking “or the Office of Thrift Supervision”.

4 (e) AMENDMENT TO SECTION 982.—Section 982(a)(3) of Title 18, United States Code (18
5 U.S.C. 982(a)(3)) is amended—

6 (1) by striking “Resolution Trust Corporation”;and

7 (2) by striking “or the Office of Thrift Supervision”.

8 (f) AMENDMENT TO SECTION 1006.—Section 1006 of Title 18, United States Code (18
9 U.S.C. 1006) is amended—

10 (1) by striking “Office of Thrift Supervision”; and

11 (2) by striking “the Resolution Trust Corporation”.

12 (g) AMENDMENT TO SECTION 1014.—Section 1014 of Title 18, United States Code (18
13 U.S.C. 1014) is amended—

14 (1) by striking “Office of Thrift Supervision”; and

15 (2) by striking “Resolution Trust Corporation.”

16 (h) AMENDMENT TO SECTION 1032.—Section 1032 of Title 18, United States Code (18
17 U.S.C. 1032) is amended—

18 (1) by striking “or the Director of the Office of Thrift Supervision”; and

19 (2) by striking “the Resolution Trust Corporation”;

20 **SEC. 1251. AMENDMENTS TO TITLE 31, UNITED STATES CODE**

21 (a) AMENDMENT TO SECTION 309.—Section 309 of Title 31, United States Code (31
22 U.S.C. 309) is amended to read as follows:

1 **“§ 309. Division of Thrift Supervision**

2 The Division of Thrift Supervision established under section 3(a) of the Home Owners’ Loan
3 Act shall be a division in the Office of the Comptroller of the Currency.”.

4 (b) AMENDMENTS TO SECTION 321.—Section 321 of Title 31, United States Code (31
5 U.S.C. 321) is amended—

6 (1) by inserting “and” at the end of subsection (c)(1);

7 (2) in subsection (c)(2) by striking “Comptroller of the Currency; and” and
8 inserting “Comptroller of the Currency.”; and

9 (3) by striking subsection (e).

10 (c) AMENDMENTS TO SECTION 714.—Section 714 of Title 31, United States Code (31
11 U.S.C. 714) is amended—

12 (1) in subsection (a) by striking “the Office of the Comptroller of the Currency, and the
13 Office of Thrift Supervision.” and inserting “and the Office of the Comptroller of the Currency.”.

14 **SUBTITLE D—FURTHER IMPROVEMENTS TO THE**
15 **REGULATION OF BANK HOLDING COMPANIES AND**
16 **DEPOSITORY INSTITUTIONS**

17
18 **SEC. 1301. TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN**
19 **COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING**
20 **COMPANY ACT.**

21 (a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12
22 U.S.C. 1841), is amended—

23 (1) in subsection (a)(5), by adding at the end the following new subparagraph:

24 “(G) No company is a bank holding company by virtue of its ownership
25 or control of a section six holding company or any subsidiary of a section six

1 holding company, so long as the requirements of sections 4(p) and 6 of this Act
2 are met, as applicable, by the section six holding company;”

3 (2) in subsection (c)(1)(A), by striking “insured bank” and inserting “insured
4 depository institution”, and by striking “section 3(h) of the Federal Deposit Insurance Act”
5 and inserting “section 3(c)(2) of the Federal Deposit Insurance Act.”;

6 (3) in subsection (c)(2)—

7 (A) by striking subparagraph (B);

8 (B) by striking subparagraphs (F) and (H), and

9 (C) by redesignating existing subparagraphs (C), (D), (E) and (G) as
10 subparagraphs (B), (C), (D) and (E), respectively; and

11 (4) at the end of section 2, adding the following new subsection:

12 “(r) SECTION SIX HOLDING COMPANIES.— A “section six holding company” means a
13 company that is required to be established as an intermediate holding company under section 6
14 of this Act.”.

15 (b) NONBANKING ACTIVITIES EXCEPTIONS.—

16 (1) IN GENERAL.— Section 4 of the Bank Holding Company Act of 1956 (12
17 U.S.C. 1843), is amended—

18 (A) in subparagraph (f)(1)(B) by striking “for purposes of this Act” and
19 inserting “for purposes of section 4(a)”; and

20 (B) by adding after section 4(f)(2)(C), the following new section:

21 “(D) such company fails to—

22 “(i) establish and register a section six holding company
23 pursuant to section 6 of this Act within 90 days after the date of
24 enactment of the Financial Stability Improvement Act of 2009,

1 unless the Board grants an extension of such period for compliance
2 which shall not exceed 180 additional days; and

3 “(ii) conduct all its activities which are financial in nature
4 or incidental thereto as determined under section 4(k) through such
5 section six holding company, in accordance with regulations
6 prescribed by or orders issued by the Board, pursuant to section 6
7 of this Act.”; and

8 (C) by inserting at the end the following new subsection:

9 “(p) CERTAIN COMPANIES NOT SUBJECT TO THIS ACT.—

10 “(1) IN GENERAL.— Except as provided in paragraphs (6) and (7), any
11 company which—

12 “(A)

13 “(i) was —

14 “(I) a unitary savings and loan holding company on
15 May 4 1999, or became a unitary savings and loan holding
16 company pursuant to an application pending before the
17 Office of Thrift Supervision on or before that date, and
18 that—

19 “(aa) on June 30, 2009, continued to control
20 not fewer than one savings association that it
21 controlled on May 4, 1999, which became a bank
22 for purposes of the Bank Holding Company Act as

1 a result of the enactment of section 1301(a)(2)(A);

2 and

3 “(bb) on June 30, 2009 and the date of
4 enactment of the Financial Stability Improvement
5 Act of 2009, such savings association subsidiary
6 was and remains a qualified thrift lender (as
7 determined by section 10 of the Home Owners’
8 Loan Act); or

9 “(ii) on June 30, 2009, controlled—

10 “(I) an institution which became a bank as a result
11 of the enactment of section 1301(a)(2)(B) of the Financial
12 Stability Improvement Act of 2009, or

13 “(II) an institution it has continuously controlled since March 5,
14 1987, which became a bank as a result of the enactment of the
15 Competitive Equality Banking Act of 1987, pursuant to subsection (f);

16 “(B) was not on June 30, 2009—

17 “(i) a bank holding company; or

18 “(ii) subject to the Bank Holding Company Act by reason
19 of section 8(a) of the International Banking Act of 1978 (12 U.S.C.
20 3106(a)); and

21 “(C) on June 30, 2009, directly or indirectly controlled shares or
22 engaged in activities that did not, on the day before the date of enactment
23 of the Financial Stability Act of 2009 comply with the activity or

1 investment restrictions on financial holding companies in section 4 in
2 accordance with regulations prescribed by the Board,
3 that did not, on the day before the date of enactment of the Financial Stability Act
4 of 2009 comply with the activity or investment restrictions on financial holding
5 companies in section 4 in accordance with regulations prescribed by the Board,
6 shall not be treated as a bank holding company for purposes of this Act solely by
7 virtue of such company's control of such institution and control of a section six
8 holding company established pursuant to section 6.

9 “(2) LOSS OF EXEMPTION.—A company described in paragraph (1) shall no
10 longer qualify for the exemption provided under that paragraph if—

11 “(A) such company fails to—

12 “(i) establish and register a section six holding company
13 pursuant to section 6 of this Act within 90 days after the date of
14 enactment of the Financial Stability Improvement Act of 2009,
15 unless the Board grants an extension of such period for compliance
16 which shall not exceed 180 additional days; and

17 “(ii) maintain a section six holding company in compliance
18 with all the requirements for a section six holding company under
19 section 6 of this Act.

20 “(B) such company directly or indirectly (including through the
21 section six holding company it must form pursuant to this subsection and
22 section 6 of this Act) acquires ownership or control of more than 5 percent

1 of the shares or assets of an additional bank or insured depository
2 institution after June 30, 2009, other than—

3 “(i) shares held as a bona fide fiduciary (whether with or
4 without the sole discretion to vote such shares);

5 “(ii) shares held by any person as a bona fide fiduciary
6 solely for the benefit of employees of either the company described
7 in paragraph (1) or any subsidiary of that company and the
8 beneficiaries of those employees;

9 “(iii) shares held temporarily pursuant to an underwriting
10 commitment in the normal course of an underwriting business;

11 “(iv) shares held in an account solely for trading purposes;

12 “(v) shares over which no control is held other than control
13 of voting rights acquired in the normal course of a proxy
14 solicitation;

15 “(vi) loans or other accounts receivable acquired from an
16 insured depository institution in the normal course of business;

17 “(vii) shares or assets acquired in securing or collecting a
18 debt previously contracted in good faith, during the 2-year period
19 beginning on the date of such acquisition or for such additional
20 time (not exceeding 3 years) as the Board may permit if the Board
21 determines that such an extension will not be detrimental to the
22 public interest;

1 “(C)—(i) the section six holding company required to be
2 established by such company, or any subsidiary bank of such company
3 undergoes a change in control after the date of enactment of the Financial
4 Stability Improvement Act of 2009, other than

5 “(I) the merger or whole acquisition of such parent
6 company in a bona fide merger or acquisition (as shall be
7 determined by the Board, which is authorized to find that a
8 transaction is not a bona fide merger or acquisition and thus
9 results in the loss of exemption), with a company that is
10 predominantly engaged in activities not permissible for a
11 financial holding company pursuant to section 4(k), or

12 “(II) the acquisition of additional shares by a
13 company that owned or controlled 7.5 percent or more of
14 any class of such parent company’s outstanding voting
15 stock on or before June 30, 2009, and continuously owned
16 or controlled at least such 7.5 percent since June 30, 2009.

17 “(ii) Nothing in this Paragraph (C) shall be construed as
18 preventing the Board from requiring compliance with this
19 subsection, section 6 or the requirements of the Change in Bank
20 Control Act (12 U.S.C. 1817(j)), as applicable to a company that is
21 permitted to acquire control without loss of the exemption in this
22 subsection 4(p)(2); or

1 “(D) any subsidiary bank of such company engages in any activity
2 after the date of enactment of the Financial Stability Improvement Act of
3 2009 which would have caused such institution to be a bank (as defined in
4 section 2(c) of this Act, as in effect before such date) if such activities had
5 been engaged in before such date.

6 “(3) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.— If any company
7 described in paragraph (1) fails to qualify for the exemption provided under
8 paragraph (1) by operation of paragraph (2), such exemption shall cease to apply
9 to such company and such company shall divest control of each bank it controls
10 before the end of the 180-day period beginning on the date on which the company
11 receives notice from the Board that the company has failed to continue to qualify
12 for such exemption, unless, before the end of such 180-day period, the company
13 has—

14 “(A) either—

15 (i) corrected the condition or ceased the activity that caused
16 the company to fail to continue to qualify for the exemption; or

17 (ii) submitted a plan to the Board for approval to cease the
18 activity or correct the condition in a timely manner (which shall
19 not exceed 1 year); and

20 “(B) implemented procedures that are reasonably adapted to avoid
21 the reoccurrence of such condition or activity.

1 (4) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—

2 This subsection shall cease to apply to any company described in

3 paragraph (1) if such company—

4 (A) registers as a bank holding company under section 2(a) of this
5 Act;

6 (B) immediately upon such registration, complies with all of the
7 requirements of this chapter, and regulations prescribed by the Board
8 pursuant to this chapter, including the nonbanking restrictions of this
9 section; and

10 (C) does not, at the time of such registration, control banks in more
11 than one State, the acquisition of which would be prohibited by section
12 3(d) of this Act if an application for such acquisition by such company
13 were filed under section 3(a) of this Act.

14 “(5) INFORMATION REQUIREMENT.— Each company described in
15 paragraph (1) shall, within 60 days after the date of enactment of the Financial
16 Stability Improvement Act of 2009, provide the Board with the name and address
17 of such company, the name and address of each bank such company controls, and
18 a description of each such bank’s activities.

19 “(6) EXAMINATIONS AND REPORTS.— The Board may, from time to time,
20 examine a company described in paragraph (1) or a bank controlled by such a
21 company, and may require reports under oath from a company described in
22 paragraph (1), and appropriate officers or directors of such company, in each case

1 solely for purposes of assuring compliance with the provisions of this subsection
2 and enforcing such compliance.

3 “(7) LIMITED ENFORCEMENT

4 “(A) IN GENERAL.— In addition to any other power of the Board,
5 the Board may enforce compliance with the provisions of this subsection
6 which are applicable to any company described in paragraph (1), and any
7 bank controlled by such company, under section 8 of the Federal Deposit
8 Insurance Act, and such company or bank shall be subject to such section
9 (for such purposes) in the same manner and to the same extent as if such
10 company were a bank holding company.

11 “(B) APPLICATION OF OTHER ACT— Any violation of this
12 subsection by any company described in paragraph (1) or any bank
13 controlled by such a company, may also be treated as a violation of the
14 Federal Deposit Insurance Act for purposes of subparagraph (A).

15 “(C) NO EFFECT ON OTHER AUTHORITY. — No provision of this
16 paragraph shall be construed as limiting any authority of the Board or any
17 other Federal agency under any other provision of law.”.

18 (c) SECTION SIX HOLDING COMPANIES.— The Bank Holding Company Act (12 U.S.C.
19 § 1841 et seq.) is amended by inserting after section 5 the following new section:

20 “**SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.** —

21 “(a) ESTABLISHMENT, PURPOSE AND REQUIREMENTS OF SPECIAL PURPOSE HOLDING
22 COMPANIES.—

1 “(1) REQUIREMENT.— A section six holding company shall be established and
2 maintained by a company--

3 “(A) described in section 4(f)(1) as required by section 4(f)(2)(D) of this Act;

4 “(B) described in section 4(p)(1) as required by section 4(p)(2)(A) of this
5 Act; or

6 “(C) that—

7 “(i) is subject to heightened prudential standards under Subtitle B of the
8 Financial Stability Improvement Act of 2009;

9 “(ii) is not—

10 “(I) a bank holding company, or

11 “(II) subject to the Bank Holding Company Act by reason of
12 section 8(a) of the International Banking Act of 1978 (12 U.S.C.
13 3106(a)); and

14 “(ii) that directly or indirectly controlled shares or engaged in activities
15 that did not, on the date the company is first subject to heightened prudential
16 standards pursuant to subtitle B of the Financial Stability Improvement Act
17 of 2009, comply with the activity or investment restrictions on financial
18 holding companies in section 4 in accordance with regulations prescribed by
19 the Board.

20 “(2) PURPOSE.—

21 “(A) A company that is required to form a section six holding company
22 shall conduct all of its activities that are determined to be financial in nature or
23 incidental thereto under section 4(k) and shall hold any shares of a bank or

1 insured depository institution controlled by such company, through the section six
2 holding company, unless the Board specifically determines otherwise in
3 accordance with paragraph (6).

4 “(B) A section six holding company shall be prohibited from conducting
5 any activities or investing in any companies other than those permissible for a
6 financial holding company under section 4, unless the Board specifically
7 determines otherwise in accordance with paragraph (6).

8 “(3) REGISTRATION.—

9 “(A) A section six holding company required to be established by a
10 company described in subparagraph (1)(A) shall be established, and such
11 company shall register with the Board as a bank holding company, pursuant to the
12 requirements in section 4(f).

13 “(B) A section six holding company required to be established by a
14 company described in subparagraph (1)(B) shall be established, and such
15 company shall register with the Board as a bank holding company, pursuant to the
16 requirements in section 4(p).

17 “(C) A section six holding company required to be established by a
18 company described in paragraph (1)(C) shall be—

19 “(i) established, and such company shall register with the Board, as
20 a bank holding company within 90 days after such company or such
21 company’s parent holding company has been notified by the Board that
22 such company is subject to heightened prudential standards under Subtitle
23 B of the Financial Stability Improvement Act of 2009, unless the Board

1 grants an extension of such period for compliance which shall not exceed
2 180 additional days;

3 “(ii) treated as a financial holding company under this Act; and

4 “(iii) subject to the authority of the Board to enforce compliance
5 with the provisions of this section under section 8 of the Federal Deposit
6 Insurance Act in the same manner and to the same extent as if such
7 company were a bank holding company.

8 “(4) RULE OF CONSTRUCTION – For purposes of this section, designation of an
9 already established intermediate holding company that will serve as the section six
10 holding company shall satisfy the requirement to establish a section six holding company,
11 provided that such existing intermediate holding company complies with all other
12 provisions applicable to a section six holding company.

13 “(5) LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.—A company that is
14 not a bank holding company or treated as a bank holding company pursuant to section
15 8(a) of the International Bank Act of 1978 that has been notified that it is an identified
16 financial holding company, pursuant to subtitle A of the Financial Stability Improvement
17 Act of 2009, shall—

18 “(A) not be deemed to be, or treated as, a bank holding company, solely
19 because of its ownership or control of a section six holding company; and,

20 “(B) not be subject to this Act, except for such provisions as are explicitly
21 made applicable in this section.

22 “(6) BOARD AUTHORITY.—

1 “(A) RULES AND EXEMPTIONS.— In addition to any other authority of the
2 Board, the Board may, at its discretion, prescribe rules and regulations or issue
3 orders regarding:

4 “(i) the establishment and operation of section six holding
5 companies;

6 “(ii) exemptions from the requirement to conduct all activities that
7 are financial or incidental thereto, as defined in section 4(k), through the
8 section six holding company if such exemption—

9 “(I) would not threaten the safety and soundness of the
10 section six holding company or any subsidiary of the section six
11 holding company;

12 “(II) would not increase systemic risk or threaten the
13 stability of the overall financial system; and

14 “(III) would not result in unfair competitive advantage to
15 the parent company of such section 6 holding company; and

16 “(iii) exemptions from the affiliate transaction requirements of
17 subsection (b) if such exemption—

18 “(I) is consistent with the purposes of this section, and
19 section 23A and section 23B of the Federal Reserve Act;

20 “(II) would not threaten the safety and soundness of the
21 section six holding company or any subsidiary of the section six
22 holding company;

1 “(III) would not increase systemic risk or threaten the
2 stability of the overall financial system; and

3 “(IV) would not result in unfair competitive advantage to
4 the parent company of such section 6 holding company.

5 “(B) PARENT COMPANY REPORTS.— The Board may, from time to time,
6 require reports under oath from a company that controls a section six holding
7 company, and appropriate officers or directors of such company, solely for
8 purposes of ensuring compliance with the provisions of this section (including
9 assessing the company’s ability to serve as a source of financial strength pursuant
10 to subsection (g)) and enforcing such compliance.

11 “(C) LIMITED PARENT COMPANY ENFORCEMENT

12 “(i) IN GENERAL.— In addition to any other power of the Board, the
13 Board may enforce compliance with the provisions of this subsection
14 which are applicable to any company described in paragraph (1), and any
15 bank controlled by such company, under section 8 of the Federal Deposit
16 Insurance Act and such company or bank shall be subject to such section
17 (for such purposes) in the same manner and to the same extent as if such
18 company were a bank holding company.

19 “(ii) APPLICATION OF OTHER ACT— Any violation of this
20 subsection by any company that controls a section six holding company or
21 any bank controlled by such a company, may also be treated as a violation
22 of the Federal Deposit Insurance Act for purposes of clause (i).

1 “(iii) NO EFFECT ON OTHER AUTHORITY. — No provision of this
2 subparagraph shall be construed as limiting any authority of the Board or
3 any other Federal agency under any other provision of law.”.

4 “(b) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—

5 “(1) SECTION 23A AND 23B APPLICABILITY.—

6 “(A) IN GENERAL.— Transactions between a section six holding
7 company established under this section (including any subsidiary of such
8 company) and any affiliate of such company that is not a subsidiary of the
9 section six holding company shall be subject to the restrictions and
10 limitations contained in section 23A and section 23B of the Federal
11 Reserve Act as if the section six holding company were a member bank.

12 “(B) COVERED TRANSACTIONS.—

13 “(i) A depository institution controlled by a section six
14 holding company may not engage in a covered transaction (as
15 defined in section 23A(b)(7) of the Federal Reserve Act) with any
16 affiliate that is not the section six holding company or a subsidiary
17 of the section six holding company.

18 “(i) For purposes of this subparagraph (B), any transaction
19 by a depository institution controlled by a section six holding
20 company with any person shall be deemed to be a transaction with
21 an affiliate that is not the section six holding company or a
22 subsidiary of the section six holding company to the extent that the

1 proceeds of the transaction are used for the benefit of, or
2 transferred to, that affiliate.

3 “(2) RULE OF CONSTRUCTION.—No provision of this subsection shall be
4 construed as exempting any subsidiary insured depository institution of a section six
5 holding company from compliance with section 23A or 23B of the Federal Reserve Act
6 with respect to each affiliate of such institution (as defined in section 23A or 23B of the
7 Federal Reserve Act), including any affiliate that is the section six holding company or
8 subsidiary of the section six holding company.

9 “(c) TYING PROVISIONS.— A company that directly or indirectly controls a section six
10 holding company shall be—

11 (1) treated as a bank holding company for purposes of section 106 of the Bank Holding
12 Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any
13 regulation prescribed under any such section; and

14 (2) subject to the restrictions of section 106 of the Bank Holding Company Act
15 Amendments of 1970, in connection with any transaction involving the products or services of
16 such company or affiliate and those of a bank affiliate, as if such company or affiliate were a
17 bank and such bank were a subsidiary of a bank holding company.

18 “(d) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL
19 ACTIVITIES-

20 “(1) IN GENERAL- A section six holding company shall not--

21 “(A) offer or market, directly or through any arrangement, any product or
22 service of an affiliate that is not a subsidiary of the section six holding company;

23 or

1 “(B) permit any of the products or services of the section six holding
2 company or any subsidiary thereof to be offered or marketed, directly or through
3 any arrangement, by or through any affiliate that is not a subsidiary of the section
4 six holding company.”

5 “(2) BOARD AUTHORITY TO GRANT EXEMPTIONS.— The Board may
6 grant exemptions from the restrictions in this subsection if--

7 “(A) the arrangement does not violate section 106 of the Bank Holding Company
8 Act Amendments of 1970; and

9 “(B) the Board determines that the arrangement is in the public interest, does not
10 undermine the separation of banking and commerce, and is consistent with the safety and
11 soundness of the section six holding company.

12 (e) FINANCIAL HOLDING COMPANY REQUIREMENTS.— A section six holding company
13 shall be subject to—

14 (A) the conditions for engaging in expanded financial activities in section 4(l); and

15 (B) the provisions applicable to financial holding companies that fail to meet certain
16 requirements in section 4(m).

17 “(f) INDEPENDENCE OF SECTION SIX HOLDING COMPANY.—

18 “(1) No less than 25 percent of the members of the board of directors of a section
19 six holding company, and each subsidiary of a section six holding company shall be
20 independent of the parent company of the section six holding company and any
21 subsidiary of such parent company. For purposes of this subsection, a director shall be
22 independent of the parent company if such person is not currently serving, and has not
23 within the previous two-year period served, as a director, officer, or employee of any

1 affiliate of the section six holding company that is not a subsidiary of the section six
2 holding company.

3 “(2) No executive officer of a section six holding company or any subsidiary of a
4 section six holding company may serve as a director, officer, or employee of an affiliate
5 of the section six holding company that is not a subsidiary of the section six holding
6 company.

7 “(3) The Board shall issue regulations that require effective legal and operational
8 separation of the functions of a section six holding company from its affiliates that are
9 not subsidiaries of such section six holding company.

10 “(g) SOURCE OF STRENGTH.— A company that directly or indirectly controls a section six
11 holding company shall serve as a source of financial strength to its subsidiary section six holding
12 company.

13 (d) CONFORMING CHANGES.— Section 4(h) of the Bank Holding Company Act of 1956
14 (12 U.S.C. 1843(h)), is amended—

15 (1) in paragraph (1), by striking “subparagraph (D), (F), (G), or (H)” and inserting
16 “subparagraph (C) or (D)”; and

17 (2) in paragraph (2), by striking “subparagraph (D), (F), (G), or (H)” and inserting
18 “subparagraph (C) or (D) ”.

19 **SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS BANK HOLDING**
20 **COMPANIES.**

21 Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by
22 inserting at the end the following new subsection:

23 “(h) CONVERSION TO BANK HOLDING COMPANY BY OPERATION OF LAW.—

1 “(1) CONVERSION BY OPERATION OF LAW.—A company that, on the day before the
2 date of enactment of the Financial Stability Improvement Act of 2009, was not a bank
3 holding company but which, by reason of sections 4(p) and 6 becomes a bank holding
4 company by operation of law, shall register as a bank holding company with the Board in
5 accordance with section 5(a) within 90 days of the date of enactment of that Act.

6 “(2) COMPLIANCE WITH BANK HOLDING COMPANY ACT.—With respect to any
7 company described in paragraph (1), the Board may grant temporary exemptions or
8 provide other appropriate temporary relief to permit such company to implement
9 measures necessary to comply with the requirements under the Bank Holding Company
10 Act.”.

11 **SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES;**
12 **REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.**

13 (a) REPORTS OF BANK HOLDING COMPANIES.—Sections 5(c)(1)(A) and (B) of the Bank
14 Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are amended to read as
15 follows:

16 “(A) IN GENERAL.— The Board, from time to time, may require a bank
17 holding company and any subsidiary of such company to submit reports under oath that
18 the Board determines are necessary or appropriate for the Board to carry out the purposes
19 of this chapter, prevent evasions thereof, and monitor compliance by the company or
20 subsidiary with the applicable provisions of law.

21 “(B) USE OF EXISTING REPORTS.—

22 “(i) IN GENERAL.—The Board shall, to the fullest extent possible, use:

1 “(I) reports that a bank holding company or any subsidiary
2 of such company has been required to provide to other Federal or
3 State regulatory agencies;

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

6 “(III) externally audited financial statements.

7 “(ii) AVAILABILITY.—A bank holding company or a subsidiary of
8 such company shall promptly provide to the Board, at the request of the
9 Board, a report referred to in clause (i)(I).”.

10 (b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding
11 Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end the following
12 new subparagraph:

13 “(C) DEFINITION.—For purposes of this subsection and section 6, the term
14 ‘functionally regulated subsidiary’ means any subsidiary (other than a depository
15 institution) of a bank holding company that is—

16 “(i) a broker or dealer registered with the Securities and Exchange
17 Commission under the Securities Exchange Act of 1934, for which the
18 Securities and Exchange Commission is the Federal regulatory agency;

19 “(ii) an investment company registered with the Securities and
20 Exchange Commission under the Investment Company Act of 1940, for
21 which the Securities and Exchange Commission is the Federal regulatory
22 agency;

1 “(iii) an investment adviser registered with the Securities and
2 Exchange Commission under the Investment Advisers Act of 1940, for
3 which the Securities and Exchange Commission is the Federal regulatory
4 agency, with respect to the investment advisory activities of such
5 investment adviser and activities incidental to such investment advisory
6 activities; and

7 “(iv) a futures commission merchant, commodity trading advisor,
8 and commodity pool operator registered with the Commodity Futures
9 Trading Commission under the Commodity Exchange Act, for which the
10 Commodity Futures Trading Commission is the Federal regulatory
11 agency, with respect to the commodities activities of such entity and
12 activities incidental to such commodities activities.”.

13 (c) EXAMINATIONS OF BANK HOLDING COMPANIES.— Sections 5(c)(2)(A) and (B) of the
14 Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)(A) and (B)) are amended to read as
15 follows:

16 “(A) IN GENERAL. – The Board may make examinations of a bank
17 holding company and any subsidiary of such a company to carry out the purposes
18 of this chapter, prevent evasions thereof, and monitor compliance by the company
19 or subsidiary with applicable provisions of law.

20 “(B) FUNCTIONALLY REGULATED AND DEPOSITORY
21 INSTITUTION SUBSIDIARIES.— The Board shall, to the fullest extent
22 possible, use reports of examination of functionally regulated subsidiaries and

1 subsidiary depository institutions made by other Federal or State regulatory
2 authorities.”.

3 (d) REGULATION OF FINANCIAL HOLDING COMPANIES.— Section 5(c)(2) of the Bank
4 Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking subparagraphs (C),
5 (D), and (E).

6 (e) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK
7 HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841, et seq.) is
8 amended by striking section 10A (12 U.S.C. 1848a) in its entirety.

9 **SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO**
10 **REMAIN WELL CAPITALIZED AND WELL MANAGED**

11 Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)), is
12 amended—

13 (1) in subparagraph (B), by striking “and”;

14 (2) by redesignating subparagraph (C) as subparagraph (D);

15 (3) by inserting after subparagraph (B) the following new subparagraph:

16 “(C) the bank holding company is well capitalized and well managed;
17 and”; and

18 (4) in subparagraph (D)(as so redesignated) by striking clause (ii) and inserting
19 the following new clause:

20 “(ii) a certification that the company meets the requirements of
21 subparagraphs A through C.”.

22 **SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.**

1 (a) BANK HOLDING COMPANY ACT OF 1956 AMENDMENT.— Section 3(d)(1)(A)
2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

3 (1) by striking “adequately capitalized” and inserting “well capitalized”; and

4 (2) by striking “adequately managed” and inserting “well managed”.

5 (b) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.— Section 44(b)(4)(B) of
6 the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to read as follows:

7 “(B) the responsible agency determines that the resulting bank will be well
8 capitalized and well managed upon the consummation of the transaction.”.

9 **SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS**
10 **WITH AFFILIATES.**

11 (a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c), is amended—

12 (1) in subsection (b)(1), by striking subparagraph (D) and inserting the following
13 new subparagraph:

14 “(D) any investment fund with respect to which a member bank or affiliate
15 thereof is an investment adviser; and

16 (2) in subsection (b)(7)(A), by inserting “(including a purchase of assets subject
17 to an agreement to repurchase)” after “affiliate”;

18 (3) in subsection (b)(7)(C), by striking “, including assets subject to an agreement
19 to repurchase,”;

20 (4) in subsection (b)(7)(D)—

21 (A) by inserting “or other debt obligations” after “acceptance of
22 securities”, and

23 (B) by striking “or” after the semicolon;

1 (5) in subsection (b)(7), by inserting at the end the following new subparagraphs:

2 “(F) any securities borrowing and lending transactions with an affiliate to
3 the extent that the transactions create credit exposure of the member bank to the
4 affiliate; or

5 “(G) current and potential future credit exposure to the affiliate on
6 derivative transactions with the affiliate;”;

7 (6) in subsection (c)(1), by striking “at the time of the transaction,” and inserting
8 “at all times”;

9 (7) in subsection (c)—

10 (A) by striking paragraph (2);

11 (B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3),
12 and (4), respectively;

13 (8) in subsection (c)(3) (as so redesignated by paragraph (7)), by inserting “or
14 other debt obligations” after “securities”;

15 (9) in subsection (f)(2), by inserting at the end the following: “The Board may
16 not, by regulation or order, grant an exemption under this section unless the Board
17 obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.”;

18 and

19 (10) in subsection (f)—

20 (A) by redesignating paragraph (3) as paragraph (4);

21 (B) and inserting after paragraph (2) the following new paragraph:

22 “(3) CONCURRENCE OF THE COMPTROLLER OF THE CURRENCY.—

23 With respect to a transaction or relationship involving a national bank or Federal savings

1 association, the Board may not grant an exemption under this section unless the Board
2 obtains the concurrence of the Comptroller of the Currency (in addition to obtaining the
3 concurrence of the Chairman of the Federal Deposit Insurance Corporation under
4 paragraph (2)).”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.— Section 23B(e) of the
6 Federal Reserve Act (12 U.S.C. 371-1(e)), is amended by inserting at the end the following new
7 paragraph:

8 “(3) The Board may not grant an exemption or exclusion under this section unless
9 the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance
10 Corporation.”.

11 **SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL**
12 **SUBSIDIARIES.**

13 Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended by—

14 (1) striking paragraph (3);

15 (2) redesignating paragraph (4) as paragraph (3).

16 **SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON**
17 **DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE**
18 **REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING**
19 **TRANSACTIONS.**

20 Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

21 (1) in subsection (b)(1), by striking “shall include all direct or indirect” and all
22 that follows in that paragraph through “commitment;” and inserting:

23 “shall include—

1 “(A) all direct or indirect advances of funds to a person made on the basis
2 of any obligation of that person to repay the funds or repayable from specific
3 property pledged by or on behalf of the person;

4 “(B) to the extent specified by the Comptroller of the Currency, such term
5 shall also include any liability of a national banking association to advance funds
6 to or on behalf of a person pursuant to a contractual commitment; and

7 “(C) credit exposure to a person arising from a derivative transaction,
8 repurchase agreement, reverse repurchase agreement, securities lending
9 transaction, or securities borrowing transaction between the national banking
10 association and the person;”;

11 (2) in subsection (b)(2) by striking the period at the end and inserting “; and”

12 (3) in subsection (b), by inserting after paragraph (2) the following new
13 paragraph:

14 “(3) the term ‘derivative transaction’ means any transaction that is a
15 contract, agreement, swap, warrant, note, or option that is based, in whole or in
16 part, on the value of, any interest in, or any quantitative measure or the occurrence
17 of any event relating to, one or more commodities, securities, currencies, interest
18 or other rates, indices, or other assets.”; and

19 (4) in subsection (d), by inserting after paragraph (2) the following new
20 paragraph:

21 “(3) The Comptroller of the Currency shall prescribe rules to administer and carry
22 out the purposes of this section with respect to credit exposures arising from any
23 derivative transaction, repurchase agreement, reverse repurchase agreement, securities

1 lending transaction, or securities borrowing transaction. Rules required to be prescribed
2 under this paragraph (3) shall take effect, in final form, not later than 180 days after the
3 date of enactment of the Financial Stability Improvement Act of 2009.”.

4 **SEC. 1309. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED**
5 **STATE BANKS.**

6 Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding
7 at the end a new subsection:

8 “(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 84 of this
9 title shall apply to every insured depository institution in the same manner and to the same extent
10 as if the insured depository institution were a national banking association.”.

11 **SEC. 1310. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.**

12 (a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The
13 National Bank Consolidation and Merger Act (12 U.S.C. 215, et seq.) is amended by adding a
14 new section 7 and renumbering accordingly:

15 **“SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.**

16 “A national bank may not convert to a State bank during any period of time in which it is
17 subject to a Cease and Desist order, memorandum of understanding, or other enforcement action
18 entered into with or issued by the Comptroller of the Currency.”; and

19 (b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised
20 Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence:

21 “The Comptroller of the Currency shall not approve the conversion of a State
22 bank to a national bank during any period of time in which the State bank is subject to a
23 Cease and Desist order, memorandum of understanding, or other enforcement action

1 entered into or issued by a State bank supervisor, the Federal Deposit Insurance
2 Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve
3 Bank.”.

4 **SEC. 1311. LENDING LIMITS TO INSIDERS.**

5 Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is
6 amended by inserting “, except that a member bank shall be deemed to have extended credit to a
7 person if the member bank has credit exposure to the person arising from a derivative
8 transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction,
9 or securities borrowing transaction between the member bank and the person.” before the period
10 at the end.

11 **SEC. 1312. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.**

12 (a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by
13 inserting after subsection (y) (as added by section 1408) the following new subsection:

14 “(z) GENERAL PROHIBITION.—An insured depository institution shall not purchase an
15 asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or
16 any related interest of such person (as such terms are defined in 22(h) of Federal Reserve Act)
17 unless the transaction is on market terms and, if the transaction represents more than 10 percent
18 of the institution’s capital stock and surplus, the transaction has been approved in advance by a
19 majority of the institution’s board of directors (with interested directors of the insured depository
20 institution not participating in the approval of the transaction).”.

21 (b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may
22 prescribe rules to implement the requirements of section (a).

1 (c) AMENDMENTS TO THE FEDERAL RESERVE ACT.— Section 22 of the Federal Reserve
2 Act (12 U.S.C. 375) is amended by striking subsection (d).

3 **SEC. 1313. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING**
4 **COMPANIES.**

5 Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended
6 by inserting “, including regulations relating to the capital levels of bank holding companies”
7 before the period at the end.

8 **SEC. 1314. ENHANCEMENTS TO FACTORS TO BE CONSIDERED IN CERTAIN**
9 **ACQUISITIONS.**

10 (a) BANK ACQUISITIONS.— Section 3(c) of the Bank Holding Company Act of 1956
11 (12 U.S.C. 1842(c)) is amended by inserting at the end the following new paragraph:

12 “(7) FINANCIAL STABILITY.—In every case, the Board shall take into consideration
13 the extent to which the proposed acquisition, merger, or consolidation may pose risk to
14 the stability of the United States financial system or the economy of the United States.”.

15 (b) NONBANK ACQUISITIONS.—

16 (i) Section 4(j)(2)(A) of the Bank Holding Company is amended by

17 (1) striking “or” before “unsound banking practices”; and

18 (2) inserting before the period at the end “, or risk to the stability of the
19 United States financial system or the economy of the United States”.

20 (ii) Section 4(k)(6) of the Bank Holding Company Act is amended by striking
21 subparagraph (B) and inserting the following new subparagraph:

22 “(B) A financial holding company may commence any activity or
23 acquire any company, pursuant to paragraph (4) or any regulation

1 prescribed or order issued under paragraph (5), without prior approval of
2 the Board, except—

- 3 “(i) for a transaction in which the total assets to be acquired
4 by the financial holding company exceed \$25 billion, and
5 “(ii) as provided in subsection (j) with regard to the
6 acquisition of a savings association.”.

7 (c) BANK MERGER ACT TRANSACTIONS.— Section 8(c)(5) of the Federal Deposit
8 Insurance Act (12 U.S.C. 1828(c)(5)) is amended by

9 (1) striking “and” before “the convenience and needs of the
10 community to be served” and

11 (2) inserting before the period at the end “, and the risk to the
12 stability of the United States financial system and the economy
13 of the United States”.

14 **SEC. 1315 ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING**
15 **COMPANY FRAMEWORK**

16 Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by
17 striking subsection (i) in its entirety and redesignating the following subsections
18 accordingly.

19 **SEC. 1316. EXAMINATION FEES FOR LARGE BANK HOLDING COMPANIES.**

20 The Bank Holding Company Act is amended by adding a new section 5A:

21 **“SEC. 5A. EXAMINATION FEES.**

22 “The Board of Governors of the Federal Reserve System or the Federal Reserve Banks
23 shall assess fees on bank holding companies with total consolidated assets of \$10 billion or

1 more. Such fees shall be sufficient to defray the cost of the examination of such bank holding
2 companies.”.

3 **SUBTITLE E—PAYMENT, CLEARING, AND** 4 **SETTLEMENT SUPERVISION**

5 6 **SEC. 1401. SHORT TITLE.**

7 This subtitle may be cited as the “Payment, Clearing, and Settlement Supervision Act of
8 2009”.

9 **SEC. 1402. FINDINGS AND PURPOSES.**

10 (a) FINDINGS.—The Congress finds the following:

11 (1) The proper functioning of the financial markets is dependent upon safe and
12 efficient arrangements for the clearing and settlement of payment, securities and other
13 financial transactions.

14 (2) Financial market utilities that conduct or support multilateral payment,
15 clearing, or settlement activities may reduce risks for their participants and the broader
16 financial system, but such utilities may also concentrate and create new risks and thus
17 must be well designed and operated in a safe and sound manner.

18 (3) Payment, clearing and settlement activities conducted by financial institutions
19 also present important risks to the participating financial institutions and to the financial
20 system.

21 (4) Enhancements to the regulation and supervision of systemically important
22 financial market utilities and the conduct of systemically important payment, clearing,
23 and settlement activities by financial institutions are necessary to provide consistency, to
24 promote robust risk management and safety and soundness, to reduce systemic risks, and

1 to support the stability of the broader financial system.

2 (b) PURPOSES.—The purposes of this subtitle are to mitigate systemic risk in the financial
3 system and promote financial stability by—

4 (1) authorizing the Board of Governors of the Federal Reserve System to
5 prescribe uniform standards for the management of risks by systemically important
6 financial market utilities and for the conduct of systemically important payment, clearing
7 and settlement activities by financial institutions;

8 (2) providing for appropriate supervision and enforcement of such risk
9 management standards for systemically important financial market utilities and payment,
10 clearing, and settlement activities; and

11 (3) strengthening the liquidity of systemically important financial market utilities.

12 **SEC. 1403. DEFINITIONS.**

13 For purposes of this subtitle, the following definitions shall apply:

14 (1) AFFILIATE.—The term “affiliate” means any company that controls, is
15 controlled by, or is under common control with another company.

16 (2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial
17 regulator” means—

18 (A) The Comptroller of the Currency, with respect to—

19 (i) any national banks or a Federal branch or Federal agency of a
20 foreign bank; and

21 (ii) after the functions of the Director of the Office of Thrift
22 Supervision are transferred under subtitle C, any Federal savings
23 association.

1 (B) the Board of Directors of the Corporation, with respect to—

2 (i) any insured State nonmember bank or any insured branch of a
3 foreign bank (other than a Federal branch); and

4 (ii) after the functions of the Director of the Office of Thrift
5 Supervision are transferred under subtitle C, any State savings association.

6 (C) The Director of the Office of Thrift Supervision, with respect to any
7 savings association and any savings and loan holding company, until the functions
8 of the Director of the Office of Thrift Supervision are transferred under subtitle C.

9 (D) The Board, with respect to—

10 (i) any State member bank;

11 (ii) any branch or agency of a foreign bank (other than any Federal
12 branch, Federal agency, or insured State branch of a foreign bank);

13 (iii) any commercial lending company owned or controlled by a
14 foreign bank;

15 (iv) any organization operating under section 25 or 25A of the
16 Federal Reserve Act (12 U.S.C. § 601 *et seq.* or § 611 *et seq.*);

17 (v) any bank holding company and any non-depository subsidiary
18 of a bank holding company (other than any broker, dealer, investment
19 company, or investment adviser registered with the Securities and
20 Exchange Commission, or any futures commission merchant, commodity
21 trading advisor, or commodity pool operator registered with the
22 Commodity Futures Trading Commission); and

23 (vi) after the functions of the Director of Thrift Supervision are

1 transferred under subtitle C, any savings and loan holding company and
2 any non-depository subsidiary of a savings and loan holding company
3 (other than any broker, dealer, investment company, or investment adviser
4 registered with the Securities and Exchange Commission, or any futures
5 commission merchant, commodity trading advisor, or commodity pool
6 operator registered with the Commodity Futures Trading Commission).

7 (E) The National Credit Union Administration Board, with respect to any
8 insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 *et*
9 *seq.*).

10 (F) The Securities and Exchange Commission, with respect to—

11 (i) any broker or dealer registered with the Securities and
12 Exchange Commission under the Securities Exchange Act of 1934 (15
13 U.S.C. § 78a *et seq.*);

14 (ii) any investment company registered with the Securities and
15 Exchange Commission under the Investment Company Act of 1940 (15
16 U.S.C. § 80a-1 *et seq.*); and

17 (iii) any investment adviser registered with the Securities and
18 Exchange Commission under the Investment Advisers Act of 1940 (15
19 U.S.C. § 80b-1 *et seq.*).

20 (G) The Commodity Futures Trading Commission, with respect to futures
21 commission merchants, commodity trading advisors, and commodity pool
22 operators registered with the Commodity Futures Trading Commission under the
23 Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

1 (H) The State insurance authority of the state in which an insurance
2 company is domiciled, with respect to any financial institution engaged in
3 providing insurance under State insurance law.

4 (I) The Board, with respect to any other financial institution engaged in an
5 identified activity.

6 (3) BOARD.—The term “Board” means the Board of Governors of the Federal
7 Reserve System.

8 (4) CORPORATION.—The term “Corporation” means the Federal Deposit
9 Insurance Corporation.

10 (5) FINANCIAL INSTITUTION.—The term “financial institution” means an entity
11 other than a financial market utility that is—

12 (A) a depository institution (as defined in section 3 of the Federal Deposit
13 Insurance Act) (12 U.S.C. § 1813);

14 (B) a branch or agency of a foreign bank (as defined in section 1(b) of the
15 International Banking Act of 1978) (12 U.S.C. § 3101);

16 (C) an organization operating under section 25 or 25A of the Federal
17 Reserve Act (12 U.S.C. § 601 *et seq.* and § 611 *et seq.*);

18 (D) a credit union (as defined in section 101 of the Federal Credit Union
19 Act) (12 U.S.C. § 1752);

20 (E) a broker or dealer (as defined in section 3 of the Securities Exchange
21 Act of 1934) (15 U.S.C. § 78c);

22 (F) an investment company (as defined in section 3 of the Investment
23 Company Act of 1940) (15 U.S.C. § 80a-3);

1 (G) an insurance company (as defined in section 2 of the Investment
2 Company Act of 1940) (15 U.S.C. § 80a-2);

3 (H) an investment adviser (as defined in section 202 of the Investment
4 Advisers Act of 1940) (15 U.S.C. § 80b-2);

5 (I) a futures commission merchant, commodity trading advisor, or
6 commodity pool operator (as defined in section 1a of the Commodity Exchange
7 Act) (7 U.S.C. § 1a); and

8 (J) any company engaged in activities that are financial in nature or
9 incidental to a financial activity, as described in section 4 of the Bank Holding
10 Company Act of 1956 (12 U.S.C. § 1843(k)).

11 (6) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any
12 person that manages or operates a multilateral system for the purpose of transferring,
13 clearing, or settling payments, securities, or other financial transactions among financial
14 institutions or between financial institutions and the person.

15 (7) IDENTIFIED ACTIVITY.—The term “identified activity” means a payment,
16 clearing, or settlement activity that the Council has identified as systemically important
17 under section 1404.

18 (8) IDENTIFIED FINANCIAL MARKET UTILITY.—The term “identified financial
19 market utility” means a financial market utility that the Council has identified as
20 systemically important under section 1404.

21 (9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

22 (A) IN GENERAL.— The term “payment, clearing, or settlement activity”
23 means one of the following activities carried out by one or more financial

1 institutions after the parties to a financial transaction agree to the transaction to
2 facilitate the completion of the financial transaction: the calculation and
3 communication of unsettled financial transactions between financial institutions;
4 netting or aggregating of financial transactions; provision and maintenance of
5 trade, contract, or instrument information; the management of risks associated
6 with unsettled financial transactions; transmittal and storage of payment
7 instructions; movement of funds; final settlement of financial transactions; and
8 other similar activities that the Board may determine by rule or order. “Payment,
9 clearing, or settlement activity” does not include, among other things, activities
10 inclusive of or prior to trade execution.

11 (B) FINANCIAL TRANSACTION.— For purposes of subparagraph (A), the
12 term “financial transaction” means a funds transfer, securities contract, contract of sale of
13 a commodity for future delivery, forward contract, repurchase agreement, swap
14 agreement, foreign exchange contract, financial derivatives contract, and any similar
15 transaction that the Board determines, by rule or order, to be a financial transaction for
16 purposes of this subtitle.

17 (10) PERSON.—The term “person” means any corporation, company, association,
18 firm, partnership, society, joint stock company, or other legal entity other than a natural
19 person.

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

21 (12) STATE.—The term “State” means any State, commonwealth, territory, or
22 possession of the United States, the District of Columbia, the Commonwealth of Puerto
23 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or

1 the United States Virgin Islands.

2 (13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal
3 agency that has primary jurisdiction over an identified financial market utility under
4 Federal banking, securities, or commodity futures laws, including—

5 (A) the Securities and Exchange Commission, with respect to an identified
6 financial market utility that is a clearing agency registered with the Securities and
7 Exchange Commission;

8 (B) the Commodity Futures Trading Commission, with respect to an
9 identified financial market utility that is a derivatives clearing organization
10 registered with the Commodity Futures Trading Commission;

11 (C) the Board of Directors of the Corporation, with respect to an identified
12 financial market utility that is—

13 (i) an insured State nonmember bank or an insured branch of a
14 foreign bank; and

15 (ii) after the functions of the Director of the Office of Thrift
16 Supervision are transferred under subtitle C, a State savings association;

17 (D) the Comptroller of the Currency, with respect to an identified financial
18 market utility that is—

19 (i) a national bank or a Federal branch (other than an insured
20 branch) or a Federal agency of a foreign bank; and

21 (ii) after the functions of the Director of the Office of Thrift
22 Supervision are transferred under subtitle C, a Federal savings association;

23 (E) the Board, with respect to an identified financial market utility that

1 is—

2 (i) a State member bank;

3 (ii) a branch or agency of a foreign bank (other than any Federal
4 branch, Federal agency, or insured State branch of a foreign bank);

5 (iii) a commercial lending company owned or controlled by a
6 foreign bank;

7 (iv) an organization operating under section 25 or 25A of the
8 Federal Reserve Act (12 U.S.C. § 601 *et seq.* or § 611 *et seq.*);

9 (v) a bank holding company and any non-depository subsidiary of
10 a bank holding company (other than any broker, dealer, investment
11 company, or investment adviser registered with the Securities and
12 Exchange Commission, or any futures commission merchant, commodity
13 trading advisor, or commodity pool operator registered with the
14 Commodity Futures Trading Commission); and

15 (vi) after the functions of the Director of the Office of Thrift
16 Supervision are transferred under subtitle C, any savings and loan holding
17 company and any non-depository subsidiary of a savings and loan holding
18 company (other than any broker, dealer, investment company, or
19 investment adviser registered with the Securities and Exchange
20 Commission, or any futures commission merchant, commodity trading
21 advisor, or commodity pool operator registered with the Commodity
22 Futures Trading Commission); and

23 (F) the Director of the Office of Thrift Supervision, with respect to an

1 identified financial market utility that is a savings association or a savings and
2 loan holding company, until the functions of the Director of the Office of Thrift
3 Supervision are transferred under subtitle C.

4 If a financial market utility is subject to supervision by more than one agency listed in
5 paragraphs (A) through (F), and those agencies cannot agree which has primary
6 jurisdiction, the Council shall decide which agency is the Supervisory Agency for
7 purposes of this subtitle.

8 (14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms
9 “systemically important” and “systemic importance” mean a situation in which the failure
10 of or a disruption to the functioning of a financial market utility or the conduct of a
11 payment, clearing, or settlement activity could create, or increase, the risk of significant
12 liquidity, credit, or other problems spreading among financial institutions or markets and
13 thereby threaten the stability of the financial system.

14 **SEC. 1404. IDENTIFICATION OF SYSTEMICALLY IMPORTANT FINANCIAL**
15 **MARKET UTILITIES AND PAYMENT, CLEARING, AND SETTLEMENT**
16 **ACTIVITIES**

17 (a) IN GENERAL.— The Council shall, at its own initiative or at the request of the Board,
18 consider whether to identify a financial market utility or a payment, clearing, or settlement
19 activity as systemically important.

20 (b) CRITERIA FOR IDENTIFICATION.— The Council shall identify a financial market utility
21 or payment, clearing, or settlement activity if the Council determines that such financial market
22 utility or activity is, or is likely to become, systemically important, based on consideration of the
23 following:

1 (1) The aggregate monetary value of the transactions processed by the financial
2 market utility or carried out through the payment, clearing, or settlement activity.

3 (2) The aggregate exposure of counterparties to the financial market utility.

4 (3) The relationship, interdependencies, or other interactions of the financial market
5 utility or payment, clearing, or settlement activity with other financial market utilities or
6 payment, clearing, or settlement activities.

7 (4) The effect that the failure of or a disruption to the financial market utility or
8 payment, clearing, or settlement activity would have on critical markets, financial
9 institutions, or the broader financial system.

10 (5) Any other factors that the Council deems appropriate.

11 (c) PERIODIC REVIEW AND RESCISSION OF IDENTIFICATIONS. The Council shall, at its own
12 initiative or at the request of the Board—

13 (1) review periodically whether a financial market utility or a payment, clearing,
14 or settlement activity continues to be systemically important; and

15 (2) rescind identification of a financial market utility or a payment, clearing, or
16 settlement activity that it determines no longer should be identified.

17 (d) PROCEDURE FOR IDENTIFYING OR RESCINDING A SYSTEMICALLY IMPORTANT
18 IDENTIFICATION.

19 (1) CONSULTATION.— Before making any determination under this section, the
20 Council shall consult with the Board, and in the case of a determination regarding
21 identification or rescission of identification of a financial market utility, the Council shall
22 consult with the relevant Supervisory Agency.

23 (2) NOTICE AND OPPORTUNITY FOR CONSIDERATION OF WRITTEN MATERIALS.—

24 (A) IN GENERAL.— The Board shall, in an executive capacity on behalf of

1 the Council, provide notice to a financial market utility or, in the case of a
2 payment, clearing, or settlement activity, financial institutions, that the Council is
3 considering whether to identify or cease to identify such financial market utility or
4 such payment, clearing, or settlement activity, including an explanation of the
5 basis of the Council's consideration, and provide such financial market utilities or
6 financial institutions 30 days to submit written materials to inform the Council's
7 decision. The Council shall make its decision, and the Board shall notify the
8 financial market utility or financial institutions of the Council's decision, within
9 60 days of the due date for such written materials.

10 (B) EMERGENCY EXCEPTION.— The Council may waive or modify the
11 requirements of subparagraph (B) if the Council determines that the waiver or
12 modification is necessary or appropriate to prevent or mitigate an immediate
13 threat to financial stability posed by the financial market utility or the payment,
14 clearing, or settlement activity. The Board shall, in an executive capacity on
15 behalf of the Council, notify the financial market utility concerned or, in the case
16 of a payment, clearing, or settlement activity, financial institutions, as soon as
17 practicable, which shall be no later than 24 hours after the waiver or modification
18 in the case of a financial market utility.

19 (3) FORM OF NOTIFICATION.— The Board shall, in an executive capacity on
20 behalf of the Council, provide notice of a decision under this section regarding—

21 (A) a financial market utility to such financial market utility by order; and

22 (B) a payment, clearing, or settlement activity to financial institutions by
23 posting a notice on the Board's web site and by publishing a notice in the Federal

1 Register.

2 **SEC. 1405. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL**
3 **MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT**
4 **ACTIVITIES.**

5 (a) BOARD REQUIREMENT TO PRESCRIBE STANDARDS.—The Board shall, by regulation or
6 order and in consultation with the Council and relevant supervisory agencies, prescribe or issue
7 risk management standards governing the operations of identified financial market utilities and
8 the conduct of identified activities by financial institutions, taking into consideration relevant
9 international standards and existing prudential requirements applicable to such financial market
10 utilities and payment, clearing, or settlement activities.

11 (b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management
12 standards prescribed under subsection (a) shall be to—

- 13 (1) promote robust risk management;
14 (2) promote safety and soundness;
15 (3) reduce systemic risks; and
16 (4) support the stability of the broader financial system.

17 (c) SCOPE.—

18 (1) IN GENERAL.—The standards prescribed under subsection (a) may address
19 areas such as risk management policies and procedures; margin and collateral
20 requirements; participant or counterparty default policies and procedures; the ability to
21 complete timely clearing and settlement of financial transactions; capital and financial
22 resource requirements for identified financial market utilities; and other areas that the
23 Board determines, by rule or order, are necessary to achieve the objectives and principles

1 in subsection (b).

2 (2) INTERACTION WITH EXISTING STANDARDS. The standards prescribed under
3 this section may—

4 (A) be different than existing standards that address the same or similar
5 subject areas; and

6 (B) may address subject areas that are not covered by existing regulations.

7 (3) THRESHOLD LEVEL.—The standards prescribed under subsection (a)
8 governing the conduct of identified activities shall, where appropriate, establish a
9 threshold as to the level or significance of engagement in the activity at which a financial
10 institution will become subject to the standards with respect to that activity.

11 (4) CATEGORIZATION AND TIERING.— In prescribing or issuing standards under
12 subsection (a) governing the conduct of identified activities and the operations of
13 identified financial market utilities, the Board shall, where appropriate, differentiate
14 among identified financial market utilities and identified activities by taking into
15 consideration their risk, complexity, leverage, frequency and dollar amount,
16 interconnectedness to the financial system, and any other factors the Board deems
17 appropriate.

18 (d) COMPLIANCE REQUIRED.—Identified financial market utilities and financial
19 institutions engaged in identified activities shall conduct their operations in compliance with the
20 applicable risk management standards prescribed by the Board.

21 **SEC. 1406. OPERATIONS AND CHANGES TO RULES, PROCEDURES, OR**
22 **OPERATIONS OF IDENTIFIED FINANCIAL MARKET UTILITIES.**

23 (a) REFERENCE.—For purposes of paragraphs (b) and (c), all references to the phrase

1 “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence of a
2 Supervisory Agency, the Board”.

3 (b) ADVANCE NOTICE OF PROPOSED CHANGES.—

4 (1) ADVANCE NOTICE REQUIRED.—Subject to subsection (c), an identified
5 financial market utility shall provide at least 60 days advance notice to the Supervisory
6 Agency or the Board of any proposed change to its rules, procedures, or operations that
7 could, as defined in rules of the Board, materially affect the nature or level of risks
8 presented by the identified financial market utility.

9 (2) TERMS AND STANDARDS PRESCRIBED BY THE BOARD.—The Board shall
10 prescribe regulations that define and describe the standards for determining when notice
11 is required to be provided under paragraph (1).

12 (3) CONSULTATION AND AVOIDANCE OF DUPLICATION.—In prescribing
13 regulations under paragraph (2), the Board shall –

14 (A) consult with the Commodity Futures Trading Commission and the
15 Securities and Exchange Commission regarding the extent to which the
16 regulations of those agencies already require advance notice of rule, procedural,
17 or operational changes; and

18 (B) seek to avoid duplicative requirements under this section whenever
19 possible.

20 (4) CONTENTS OF NOTICE.—Any notice of a proposed change provided by an
21 identified financial market utility under paragraph (1) shall describe—

22 (A) the nature of the change;

23 (B) any expected effects on risks to the identified financial market utility,

1 its participants, or the market; and

2 (C) the manner in which the identified financial market utility plans to
3 manage any identified risks.

4 (5) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board may
5 require an identified financial market utility to provide any information necessary to
6 assess—

7 (A) the effect the proposed change would have on the nature or level of
8 risks associated with the identified financial market utility's payment, clearing, or
9 settlement activities; and

10 (B) the sufficiency of any proposed risk management techniques.

11 (6) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will notify the
12 identified financial market utility of any objection regarding the proposed change before
13 the end of the 60-day period beginning on the later of—

14 (A) the date that the notice of the proposed change is received; or

15 (B) the date any further information requested for consideration of the
16 notice is received.

17 (7) CHANGE NOT ALLOWED IF OBJECTION.—An identified financial market utility
18 shall not implement a change to which the Supervisory Agency or Board has an
19 objection.

20 (8) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —An identified financial
21 market utility may implement a change if it has not received an objection to the proposed
22 change before the end of the 60-day period beginning on the later of—

23 (A) the date that the Supervisory Agency or the Board receives the notice

1 of proposed change; or

2 (B) the date the Supervisory Agency or the Board receives any further
3 information that the Supervisory Agency or the Board requests for consideration
4 of the notice.

5 (9) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—

6 (A) IN GENERAL. The Supervisory Agency or the Board may, during the
7 60-day review period, extend the review period for an additional 60 days for
8 proposed changes that raise novel or complex issues, subject to the Supervisory
9 Agency or the Board providing the identified financial market utility with prompt
10 written notice of the extension.

11 (B) EXTENSION OF OTHER TIME PERIODS.—Any time period referred to
12 under paragraphs (6) and (8) shall be extended by the amount of any extension of
13 time under clause (A).

14 (10) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—An identified
15 financial market utility may implement a change in less than 60 days from the date of
16 receipt of the notice of proposed change by the Supervisory Agency or the Board, or the
17 date the Supervisory Agency or the Board receives any further information it requested,
18 if—

19 (A) the Supervisory Agency or the Board notifies the identified financial market
20 utility in writing that it does not object to the proposed change; and

21 (B) authorizes the identified financial market utility to implement the change on
22 an earlier date, subject to any conditions imposed by the Supervisory Agency or the
23 Board.

1 (c) EMERGENCY CHANGES.—

2 (1) IN GENERAL.—An identified financial market utility may implement a change
3 that would otherwise require advance notice under this subsection if it determines that—

4 (A) an emergency exists; and

5 (B) immediate implementation of the change is necessary for the
6 identified financial market utility to continue to provide its services in a safe and
7 sound manner.

8 (2) NOTICE REQUIRED WITHIN 24 HOURS.—Any identified financial market utility
9 that implements a change pursuant to a determination under paragraph (1) shall provide
10 notice of such an emergency change to its Supervisory Agency or the Board as soon as
11 practicable, which shall be no later than 24 hours after implementation of the change.

12 (3) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required
13 under subsection (b) for any change requiring an advance notice, the notice under
14 paragraph (2) of an emergency change must describe—

15 (A) the nature of the emergency; and

16 (B) the reason the change was necessary for the identified financial market
17 utility to continue to provide its services in a safe and sound manner.

18 (4) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The
19 Supervisory Agency or the Board may require a modification or a rescission of any
20 change of which the Supervisory Agency or the Board receives notice under this
21 subsection if the Supervisory Agency or the Board finds that the change is not consistent
22 with the purposes of this subtitle or any regulations, orders, or standards prescribed,
23 issued, or established by the Board hereunder.

1 (d) COORDINATION BETWEEN AGENCIES AND THE BOARD.—In the case of an identified
2 financial market utility that has a Supervisory Agency other than the Board, the Supervisory
3 Agency shall—

4 (1) provide the Board concurrently with a complete copy of any notice, request, or
5 other information such agency issues, submits, or receives under this subsection with
6 respect to such utility; and

7 (2) consult with the Board before taking any action on or completing any review
8 of a change proposed by an identified financial market utility.

9 **SEC. 1407. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**
10 **IDENTIFIED FINANCIAL MARKET UTILITIES.**

11 (a) EXAMINATION.—Notwithstanding any other provision of law and subject to
12 subsection (d), the Supervisory Agency shall conduct examinations of an identified financial
13 market utility at least annually in order to inform itself of the following:

14 (1) the nature of the operations of, and the risks borne by, the identified financial
15 market utility;

16 (2) the financial and operational risks presented by the identified financial market
17 utility to financial institutions, critical markets, or the broader financial system;

18 (3) the resources and capabilities of the identified financial market utility to
19 monitor and control such risks;

20 (4) the safety and soundness of the identified financial market utility; and

21 (5) the identified financial market utility’s compliance with this subtitle and the
22 rules and orders prescribed by the Board under this subtitle.

23 (b) SERVICE PROVIDERS.—

1 (1) Whenever a service integral to the operation of an identified financial market
2 utility is performed for the identified financial market utility by another entity, whether
3 an affiliate or non-affiliate and whether on or off the premises of the identified financial
4 market utility, the Supervisory Agency may examine whether the provision of that
5 service is in compliance with applicable law, rules, orders, and standards to the same
6 extent as if the identified financial market utility were performing the service on its own
7 premises.

8 (c) ENFORCEMENT.—Except as provided in subsections (e) and (g), an identified financial
9 market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the
10 Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as
11 if the identified financial market utility were an insured depository institution for which the
12 Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the
13 Federal Deposit Insurance Act (12 U.S.C. § 1813).

14 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

15 (1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory
16 Agency shall consult with the Board regarding the scope and methodology of any
17 examination conducted under subsections (a) and (b).

18 (2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion,
19 participate in any examination led by a Supervisory Agency and conducted under
20 subsections (a) and (b).

21 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

22 (1) RECOMMENDATION.—The Board may at any time recommend to the
23 Supervisory Agency that it take enforcement action against an identified financial market

1 utility. The recommendation shall be in writing and shall provide a detailed analysis
2 supporting the Board's recommendation.

3 (2) CONSIDERATION.—The Supervisory Agency shall consider the Board's
4 recommendation and submit a response to the Board within 30 days.

5 (3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the
6 Board's recommendation, then the Council shall mediate between the parties and
7 encourage them to reach agreement on whether an enforcement action should be brought,
8 and if so by which agency.

9 (4) ENFORCEMENT ACTION.—If the Supervisory Agency fails to respond to the
10 Board's recommendation in accordance with paragraph (2), if the Supervisory Agency
11 reaches agreement with the Board that the Board should take an enforcement action, or if
12 the Supervisory Agency rejects the Board's recommendation and the Council is unable to
13 resolve the dispute under paragraph (3), then the Board may exercise the enforcement
14 authority referenced in subsection (c) as if it were the Supervisory Agency and take
15 enforcement action against the identified financial market utility.

16 (f) IDENTIFIED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In the
17 case of an identified financial market utility that is not under the primary jurisdiction of a
18 Supervisory Agency, the Board shall have examination and enforcement authority under
19 subsections (a) through (c) with respect to the identified financial market utility and any service
20 providers in the same manner and to the same extent as if the Board were the Supervisory
21 Agency.

22 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

1 (1) IMMEDIATE RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with
2 the Supervisory Agency, take enforcement action against an identified financial market
3 utility if the Board has reasonable cause to believe that—

4 (A) either—

5 (i) an action engaged in, or contemplated by, an identified financial market
6 utility (including any change proposed by the identified financial market utility to
7 its rules, procedures, or operations that would otherwise be subject to section
8 1406(b) or (c)); or

9 “(ii) the condition of an identified financial market utility,
10 poses an imminent risk of substantial harm to financial institutions, critical markets,
11 or the broader financial system; and

12 (B) the imminent risk of substantial harm precludes the Board’s use of the
13 procedures in subsection (e).

14 (2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under
15 paragraph (1) against an identified financial market utility as if the identified financial
16 market utility were an insured depository institution for which the Board is the
17 appropriate Federal banking agency as defined in section 3 of the Federal Deposit
18 Insurance Act (12 U.S.C. 1813).

19 (3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24
20 hours of taking an enforcement action under this subsection, the Board shall provide
21 written notice to the identified financial market utility’s Supervisory Agency containing a
22 detailed analysis of the Board’s action, with supporting documentation included.

23 **SEC. 1408. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**

1 **FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR IDENTIFIED**
2 **ACTIVITIES.**

3 (a) EXAMINATION.—The appropriate financial regulator shall periodically conduct
4 examinations of a financial institution that is subject to the standards prescribed by the Board for
5 an identified activity in order to inform the appropriate financial regulator of the following:

6 (1) the nature and scope of the identified activities engaged in by the financial
7 institution;

8 (2) the financial and operational risks the identified activities engaged in by the
9 financial institution may pose to the safety and soundness of the financial institution;

10 (3) the financial and operational risks the identified activities engaged in by the
11 financial institution may pose to other financial institutions, critical markets, or the
12 broader financial system;

13 (4) the resources available to and the capabilities of the financial institution to
14 monitor and control the risks described in paragraphs (2) and (3); and

15 (5) the financial institution's compliance with this subtitle and the rules and orders
16 prescribed by the Board under this subtitle.

17 (b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it
18 deems necessary to ensure that a financial institution that is subject to the standards prescribed
19 by the Board for an identified activity complies with this subtitle and the rules and orders
20 prescribed by the Board under this subtitle.

21 (c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical
22 assistance as may be required by the appropriate financial regulators to ensure that the Board's
23 rules and orders prescribed under this subtitle are interpreted and applied in as consistent and

1 uniform a manner as practicable.

2 (d) DELEGATION.—

3 (1) EXAMINATION.—

4 (A) REQUEST TO BOARD.—The appropriate financial regulator may request
5 the Board to conduct, or to participate in, an examination of a financial institution
6 subject to the standards prescribed by the Board for an identified activity in order
7 to assess the financial institution’s compliance with this subtitle or the Board’s
8 rules or orders prescribed under this subtitle.

9 (B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written
10 request, the Board will conduct the examination under such terms and conditions
11 to which the Board and the appropriate financial regulator mutually agree.

12 (2) ENFORCEMENT.—

13 (A) REQUEST TO BOARD.—An appropriate financial regulator may request
14 the Board to enforce this subtitle or the rules or orders prescribed by the Board
15 under this subtitle against a financial institution subject to the standards
16 prescribed by the Board for an identified activity.

17 (B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written
18 request, the Board shall—

19 (i) determine whether an enforcement action is warranted; and,

20 (ii) if so, it shall enforce compliance with this subtitle or the rules
21 or orders prescribed by the Board under this subtitle

22 (C) ENFORCEMENT AUTHORITY.— For purposes of carrying out
23 subparagraph (B), the Board shall have authority under subsections (b) through

1 (n) of section 8 of the Federal Deposit Insurance Act with respect to a financial
2 institution in the same manner and to the same extent as if the financial institution
3 were an insured depository institution for which the Board is the appropriate
4 Federal banking agency (as defined in section 3 of such Act).

5 (e) BACK-UP AUTHORITY OF THE BOARD.—

6 (1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of
7 law, the Board may—

8 (A) conduct an examination of any financial institution that is subject to
9 the standards prescribed by the Board for an identified activity; and

10 (B) enforce the provisions of this subtitle or any rules or orders prescribed
11 by the Board under this subtitle against any financial institution subject to the
12 standards prescribed by the Board for an identified activity.

13 (2) LIMITATIONS.—

14 (A) EXAMINATION.—The Board may exercise the authority described in
15 paragraph (1)(A) only if the Board has—

16 (i) reasonable cause to believe that a financial institution is not in
17 compliance with this subtitle or the rules or orders prescribed by the Board
18 under this subtitle with respect to an identified activity;

19 (ii) notified, in writing, the appropriate financial regulator of its
20 belief under clause (i) with supporting documentation included;

21 (iii) requested the appropriate financial regulator to conduct a
22 prompt examination of the financial institution; and

23 (iv) either—

1 (I) not been afforded a reasonable opportunity to participate
2 in an examination of the financial institution by the appropriate
3 financial regulator within 30 days after the date of the Board's
4 notification under clause (ii); or

5 (II) reasonable cause to believe that the financial
6 institution's noncompliance with this subtitle or the rules or orders
7 prescribed by the Board under this subtitle poses a substantial risk
8 to other financial institutions, critical markets, or the broader
9 financial system, subject to the Board affording the appropriate
10 financial regulator a reasonable opportunity to participate in the
11 examination.

12 (B) ENFORCEMENT.—The Board may exercise the authority described in
13 paragraph (1)(B) only if the Board has—

14 (i) reasonable cause to believe that a financial institution is not in
15 compliance with this subtitle or the rules or orders prescribed by the Board
16 under this subtitle with respect to an identified activity;

17 (ii) notified, in writing, the appropriate financial regulator of its
18 belief under clause (i) with supporting documentation included and with a
19 recommendation that the appropriate financial regulator take one or more
20 specific enforcement actions against the financial institution; and

21 (iii) either—

22 (I) not been notified, in writing, by the appropriate financial
23 regulator of the commencement of an enforcement action

1 recommended by the Board against the financial institution within
2 30 days from the date of the notification under clause (ii); or
3 (II) reasonable cause to believe that the financial
4 institution's noncompliance with this subtitle or the rules or orders
5 prescribed by the Board under this subtitle poses a substantial risk
6 to other financial institutions, critical markets, or the broader
7 financial system, subject to the Board notifying the appropriate
8 financial regulator of the Board's enforcement action.

9 (3) ENFORCEMENT PROVISIONS.—The Board shall have authority under
10 subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. §
11 1818) with respect to a financial institution subject to the standards prescribed by the
12 Board for an identified activity in the same manner and to the same extent as if the
13 financial institution were an insured depository institution for which the Board is the
14 appropriate Federal banking agency (as defined in section 3 of such Act).

15 **SEC. 1409. PROVISION OF INFORMATION, REPORTS, OR RECORDS.**

16 (a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

17 (1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any
18 financial market utility to submit such information as the Council may require for the
19 purpose of assessing whether that financial market utility is systemically important if the
20 Council has reasonable cause to believe that the financial market utility meets the
21 standards for systemic importance set out in section 1404 of this subtitle.

22 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT
23 ACTIVITIES.—The Council is authorized to require any financial institution to submit such

1 information as the Council may require for the purpose of assessing whether any
2 payment, clearing, or settlement activity engaged in or supported by a financial institution
3 is systemically important if the Council has reasonable cause to believe that the activity
4 meets the standards for systemic importance set out in section 1404 of this subtitle.

5 (b) REPORTING AFTER IDENTIFICATION.—

6 (1) IDENTIFIED FINANCIAL MARKET UTILITIES.—The Board may require an
7 identified financial market utility to submit reports or data to the Board in such frequency
8 and form as deemed necessary by the Board in order to assess the safety and soundness of
9 the utility and the systemic risk that the utility’s operations pose to the financial system.

10 (2) FINANCIAL INSTITUTIONS SUBJECT TO THE STANDARDS PRESCRIBED BY THE
11 BOARD.—The Board may require 1 or more financial institutions subject to the standards
12 prescribed by the Board for an identified activity to submit, in such frequency and form
13 as deemed necessary by the Board, reports and data to the Board solely with respect to
14 the conduct of the identified activity and solely to assess whether—

15 (A) any regulation, order, standard, or guideline prescribed by the Board
16 with respect to the identified activity appropriately address the risks to the
17 financial system presented by such activity; and

18 (B) the financial institutions are in compliance with this subtitle and the
19 rules and orders prescribed by the Board under this subtitle with respect to the
20 identified activity.

21 (c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

22 (1) ADVANCE COORDINATION.—Before directly requesting any material
23 information from, or imposing reporting or recordkeeping requirements on, any financial

1 market utility or any financial institution engaged in a payment, clearing, or settlement
2 activity, the Council and the Board shall coordinate with the Supervisory Agency for a
3 financial market utility or the appropriate financial regulator for a financial institution to
4 determine if the information is available from or may be obtained by the agency in the
5 form, format, or detail required by the Council or the Board.

6 (2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the
7 Supervisory Agencies, the appropriate financial regulators, the Council, and the Board
8 are authorized to disclose to each other a copy of the relevant portion of any examination
9 report or similar report regarding any financial market utility or any financial institution
10 engaged in payment, clearing, or settlement activities.

11 (d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the
12 information, report, records, or data requested by the Council or the Board under subsection
13 (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator
14 within 30 days after the date on which the material is requested, the Council or the Board may
15 request the information or impose recordkeeping or reporting requirements directly on such
16 persons as provided in subsections (a) and (b) with notice to the Supervisory Agency or the
17 appropriate financial regulator.

18 (e) SHARING OF INFORMATION.—

19 (1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the
20 Council, the Board, the appropriate financial regulator, and any Supervisory Agency are
21 authorized to—

22 (A) promptly notify each other of material concerns about an identified
23 financial market utility or any financial institution subject to the standards

1 prescribed by the Board for an identified activity; and

2 (B) share appropriate reports, information or data relating to such
3 concerns.

4 (2) OTHER.—Notwithstanding any other provision of law, the Council or the
5 Board may, under such terms and conditions it deems appropriate and subject to
6 reasonable assurances of confidentiality, provide confidential supervisory information
7 and other information obtained under this subtitle to other persons it deems appropriate,
8 including the Secretary, State financial institution supervisory agencies, foreign financial
9 supervisors, foreign central banks, and foreign finance ministries.

10 (f) PRIVILEGE MAINTAINED.—The Council, the Board, the appropriate financial regulator,
11 the Supervisory Agency, and any financial market utility or financial institution providing
12 reports or data under this section shall not be deemed to have waived any privilege applicable to
13 those reports or data, or any portion thereof, by providing the reports or data to the other party or
14 by permitting the reports or data, or any copies thereof, to be used by the other party.

15 (g) DISCLOSURE EXEMPTION.—

16 (1) IN GENERAL.— Information obtained by the Board under this section and any
17 materials prepared by the Board in connection with its supervision of identified financial
18 market utilities and identified activities, shall be confidential supervisory information
19 exempt from disclosure under section 552 of title 5, United States Code.

20 (2) For purposes of section 552 of title 5, this subsection shall be considered a
21 statute described in subsection (b)(3) of section 552.

22 **SEC. 1410. RULEMAKING.**

23 The Board is authorized to prescribe such rules and issue such orders as may be

1 necessary to administer and carry out the purposes of this subtitle and prevent evasions thereof.

2 **SEC. 1411. OTHER AUTHORITY.**

3 The authorities granted to agencies under this subtitle are in addition to any rulemaking,
4 examination, enforcement, or other authorities that those agencies may have under other law and
5 in no way shall be construed to limit such other authority, except that any standards imposed by
6 the Board under section 1405 shall supersede any less stringent requirements established under
7 other authority to the extent of any conflict.

8 **SEC. 1412. EFFECTIVE DATE.**

9 This subtitle is effective as of the date of enactment.

10 **SUBTITLE F – IMPROVEMENTS TO THE ASSET-BACKED**
11 **SECURITIZATION PROCESS**

12

13 **SEC. 1501. SHORT TITLE.**

14 This Subtitle may be cited as the “Credit Risk Retention Act of 2009”.

15 **SEC. 1502. CREDIT RISK RETENTION.**

16 The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section
17 28 the following new section:

18 **“SEC. 29. CREDIT RISK RETENTION.**

19 **“(a) IN GENERAL.—**

20 **“(1) INTEREST IN LOANS MADE BY CREDITORS.—**Within 180 days of the date of enactment
21 of this Act, the Federal banking agencies and the Commission shall jointly prescribe
22 regulations to require any creditor that makes a loan to retain an economic interest in a
23 material portion of the credit risk of any such loan that the creditor transfers, sells, or

1 conveys to a third party, including for the purpose of including such loan in a pool of
2 loans backing an issuance of asset-backed securities.

3 “(2) INTEREST IN ASSETS BACKING ASSETBACKED SECURITIES.—The Federal banking
4 agencies and the Commission shall prescribe regulations to require any securitizer of
5 asset-backed securities that are backed by assets not described in paragraph (1) to retain
6 an economic interest in a material portion of any such asset used to back an issuance of
7 securities.

8 “(b) ALTERNATIVE RISK RETENTION FOR CREDIT SECURITIZERS.—The Federal banking agencies
9 and the Commission may jointly apply the risk retention requirements of this section to
10 securitizers of loans or particular types of loans in addition to or in substitution for any or all of
11 the requirements that apply to creditors that make such loans or types of loans, if the agencies
12 jointly determine that applying the requirements to such securitizers would—

13 “(1) be consistent with helping to ensure high quality underwriting standards for
14 creditors, taking into account other applicable laws, regulations, and standards; and

15 “(2) facilitate appropriate risk management practices by such creditors, improve access
16 of consumers to credit on reasonable terms, or otherwise serve the public interest.

17 “(c) STANDARDS FOR REGULATION.—Regulations prescribed under subsections (a) and

18 (b) shall—

19 “(1) prohibit a creditor or securitizer from directly or indirectly hedging or otherwise
20 transferring the credit risk such creditor or securitizer is required to retain under the
21 regulations;

1 “(2) require a creditor or securitizer to retain 10 percent of the credit risk on any loan that
2 is transferred, sold, or conveyed by such creditor or securitized by such securitizer
3 except—

4 “(A) if the Federal banking agencies and the Commission determine the credit
5 underwriting by the creditor or the due diligence by the securitizer meets such
6 standards as the Federal banking agencies and the Commission shall specify, the
7 percentage of risk retention may be less than 10 percent of the credit risk, but in
8 no case less than 5 percent of credit risk; and

9 “(B) if the Federal banking agencies and the Commission determine the
10 underwriting by the creditor or due diligence by the securitizer is insufficient, the
11 percentage of risk retention may be higher than 10 percent;

12 “(3) specify that the credit risk retained must be no less at risk for loss than the average
13 of the credit risk not so retained; and “(4) set the minimum duration of the required risk
14 retention.

15 “(d) EXEMPTIONS AND ADJUSTMENTS.—

16 “(1) IN GENERAL.—The Federal banking agencies and the Commission shall have
17 authority to jointly provide exemptions or adjustments to the requirements of this section,
18 including exemptions or adjustments relating to the 10 percent risk retention threshold
19 and the hedging prohibition.

20 “(2) APPLICABLE STANDARDS.—Any exemptions or adjustments provided under
21 paragraph (1) shall—

1 “(A) be consistent with the purpose of ensuring high quality underwriting
2 standards for creditors, taking into account other applicable laws, regulations, or
3 standards; and

4 “(B) facilitate appropriate risk management practices by such creditors, improve access
5 for consumers to credit on reasonable terms, or otherwise serve the public interest.

6 “(e) ENFORCEMENT.—

7 “(1) Compliance with the requirements imposed under this subchapter shall be enforced
8 under—

9 “(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case
10 of—

11 “(i) national banks, and Federal branches and Federal agencies of foreign
12 banks, by the Office of the Comptroller of the Currency;

13 “(ii) member banks of the Federal Reserve System (other than national
14 banks), branches and agencies of foreign banks (other than Federal
15 branches, Federal agencies, and insured State branches of foreign banks),
16 commercial lending companies owned or controlled by foreign banks, and
17 organizations operating under section 25 or 25(a) of the Federal Reserve
18 Act (12 U.S.C. 601 et seq., 611 et seq.), bank holding companies, and
19 subsidiaries of bank holding companies (other than insured depository
20 institutions), by the Board; and

21 “(iii) banks insured by the Federal Deposit Insurance Corporation (other
22 than members of the Federal Reserve System) and insured State branches

1 of foreign banks, by the Board of Directors of the Federal Deposit
2 Insurance Corporation;

3 “(B) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the
4 Director of the Office of Thrift Supervision, in the case of a savings association
5 the deposits of which are insured by the Federal Deposit Insurance Corporation
6 and a savings and loan holding company and to any subsidiary (other than a bank
7 or subsidiary of that bank); and

8 “(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National
9 Credit Union Administration Board with respect to any Federal credit union.

10 “(2) Except to the extent that enforcement of the requirements imposed under this
11 subchapter is specifically committed to some other Government agency under
12 subparagraph (1), the Commission shall enforce such requirements.

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

15 “(f) DEFINITIONS.—For purposes of this section:

16 “(1) The term ‘asset-backed security’ has the meaning given such term in section
17 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto.

18 “(2) The term ‘Federal banking agencies’ means the Board of Governors of the Federal
19 Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift
20 Supervision, and the Federal Deposit Insurance Corporation.

21 “(3) The term ‘insured depository institution’ has the meaning given such term in section
22 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

1 “(4) The term ‘securitization vehicle’ means a trust, corporation, partnership, limited
2 liability entity, special purpose entity, or other structure that—

3 “(A) is the issuer, or is created by the issuer, of pass-through certificates,
4 participation certificates, asset-backed securities, or other similar securities
5 backed by a pool of assets that includes loans; and

6 “(B) holds such loans.

7 “(5) The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes
8 the transfer, conveyance, or assignment of, loans, including through a special purpose
9 vehicle, to any securitization vehicle, excluding any trustee that holds such loans for the
10 benefit of the securitization vehicle.’’.

11 **SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE SE20**

12 **CURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.**

13 Section 15(d) of Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

14 (1) by inserting ‘‘, other than securities of any class of asset-backed security (as defined
15 in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor
16 thereto),’’ after ‘‘securities of each class’’;

17 (2) by inserting at the end the following: ‘‘The Commission may by rules and regulations
18 provide for the suspension or termination of the duty to file under this subsection for any
19 class of issuer of asset-backed security upon such terms and conditions and for such
20 period or periods as it deems necessary or appropriate in the public interest or for the
21 protection of investors. The Commission may, for the purposes of this subsection,
22 classify issuers and prescribe requirements appropriate for each class of issuer of asset-
23 backed security.’’; and

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

13 **SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED**
14 **OFFERINGS.**

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

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

21 (2) require disclosure on fulfilled repurchase requests across all trusts aggregated by
22 originator, so that investors may identify asset originators with clear underwriting
23 deficiencies.

1 **SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.**

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

3 (1) by striking paragraph (5); and

4 (2) by redesignating paragraph (6) as paragraph (5).

5 (b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking “4(6)” and inserting “4(5)”.

7 **SUBTITLE G—ENHANCED RESOLUTION AUTHORITY**

8 **SEC. 1601. SHORT TITLE.**

9 This Act may be cited as the “Resolution Authority for Large, Interconnected Financial
10 Companies Act of 2009”.

11 **SEC. 1602. DEFINITIONS.**

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

13 (1) APPROPRIATE FEDERAL REGULATORY AGENCY. —

14 (A) CORPORATION AND COMMISSION.—The term “Appropriate Federal
15 Regulatory Agency” means—

16 (i) the Corporation; and

17 (ii) the Commission, if the financial company, or an affiliate
18 thereof, is a broker or dealer registered with the Commission under section
19 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other
20 than an insured depository institution)).

21 (B) RULES OF CONSTRUCTION.—More than one agency may be an
22 Appropriate Federal Regulatory Agency with respect to any given financial
23 company. In such instances, the Commission shall be the Appropriate Federal

1 Regulatory Agency for purposes of section 1603 if the largest subsidiary of the
2 financial company is a broker or dealer as measured by total assets as of the end
3 of the previous calendar quarter, and otherwise the Corporation shall be the
4 Appropriate Federal Regulatory Agency for purposes of section 1603.

5 (2) BRIDGE FINANCIAL COMPANY.—The term “bridge financial company”
6 means a new financial company organized in accordance with section 1609(h) by
7 the Corporation.

8 (3) COMMISSION.—The term “Commission” means the Securities and
9 Exchange Commission.

10 (4) CORPORATION.—The term “Corporation” means the Federal Deposit
11 Insurance Corporation.

12 (5) COVERED FINANCIAL COMPANY.—The term “covered financial
13 company” means a financial company for which a determination has been made
14 pursuant to and in accordance with section 1603(b).

15 (6) COVERED SUBSIDIARY.—The term “covered subsidiary” means a
16 subsidiary covered in paragraph (9)(B)(iv) of this section.

17 (7) CUSTOMER PROPERTY.—The term “customer property” has the
18 meaning ascribed to it in the Securities Investor Protection Act of 1970.

19 (8) FEDERAL RESERVE BOARD.—The term “Federal Reserve Board” means
20 the Board of Governors of the Federal Reserve System.

21 (9) FINANCIAL COMPANY.—The term “financial company” means any
22 company that—

23 (A) is incorporated or organized under Federal law or the laws of

1 any State and

2 (B) is—

3 (i) a bank holding company as defined in section 2(a) of the
4 Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

5 (ii) any identified financial holding company, as defined in
6 section 2(5) of the Financial Stability Improvement Act of 2009,
7 that has been subjected to heightened prudential regulation;

8 (iii) any company predominantly engaged in activities that
9 are financial in nature or incidental thereto for purposes of section
10 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. §
11 1843(k)) or that have been identified for heightened prudential
12 standards under section 1106 of this title; or

13 (iv) any subsidiary of companies described in clauses (i)
14 through (iii) (other than an insured depository institution, any
15 broker or dealer registered with the Commission under section
16 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b))
17 that is a member of the Securities Investor Protection Corporation,
18 or an insurance company).

19 (10) FUND.—The term “Fund” means the Systemic Resolution Fund
20 established in accordance with section 1609(n).

21 (11) IDENTIFIED FINANCIAL HOLDING COMPANY.—The term “identified
22 financial holding company” means a financial company that is subject to
23 heightened prudential standards, as defined in section 2(5) of the Financial

1 Stability Improvement Act of 2009.

2 (12) INSURANCE COMPANY.—The term “insurance company” means a
3 domestic insurance company, as that term is defined for purposes of title 11 of the
4 United States Code.

5 (13) SECRETARY.—The term “Secretary” shall mean the Secretary of the
6 Treasury.

7 (14) STATE.—The term “State” means any State, commonwealth, territory,
8 or possession of the United States, the District of Columbia, the Commonwealth
9 of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American
10 Samoa, Guam, and the United States Virgin Islands.

11 (15) CERTAIN OTHER TERMS.—The terms “affiliate,” “company,”
12 “control,” “deposit,” “depository institution,” “foreign bank,” “insured depository
13 institution,” and “subsidiary” have the same meanings as in section 3 of the
14 Federal Deposit Insurance Act (12 U.S.C. 1813).

15 **SEC. 1603. SYSTEMIC RISK DETERMINATION.**

16 (a) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE
17 APPROPRIATE FEDERAL REGULATORY AGENCY.—

18 (1) VOTE REQUIRED.—At the request of the Secretary or the Chairman of the
19 Federal Reserve Board or, in cases where an financial company has a broker or dealer as
20 its largest subsidiary as measured by total assets as of the end of the previous calendar
21 quarter, the Commission, the Federal Reserve Board and the Appropriate Federal
22 Regulatory Agency shall, or on their own initiative the Federal Reserve Board and the
23 Appropriate Federal Regulatory Agency may, consider whether to make the written

1 recommendation provided for in paragraph (2) with respect to a financial company that is
2 an identified financial holding company, which recommendation shall be made upon a
3 vote of not less than two-thirds of the members of the Federal Reserve Board then
4 serving and two-thirds of the members of the board or of the commission then serving of
5 the Appropriate Federal Regulatory Agency, as applicable.

6 (2) RECOMMENDATION REQUIRED.—Any written recommendations made by the
7 Federal Reserve Board and the Appropriate Federal Regulatory Agency under paragraph
8 (1) shall contain the following—

9 (A) a description of the effect that the default of the identified financial
10 holding company would have on economic conditions or financial stability in the
11 United States; and

12 (B) a recommendation regarding the nature and the extent of actions that
13 the Board and the Appropriate Federal Regulatory Agency recommend be taken
14 under section 1604 regarding the identified financial holding company.

15 (b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of
16 Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve
17 Board and the board of directors or commission of the Appropriate Federal Regulatory Agency
18 as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines
19 that—

20 (1) the identified financial holding company is in default or is in danger of
21 default;

22 (2) the failure of the identified financial holding company and its resolution
23 under otherwise applicable Federal or State law would have serious adverse effects on

1 financial stability or economic conditions in the United States; and

2 (3) any action under section 1604 would avoid or mitigate such adverse effects,
3 taking into consideration the effectiveness of the action in mitigating potential adverse
4 effects on the financial system or economic conditions, the cost to the general fund of the
5 Treasury, and the potential to increase moral hazard on the part of creditors,
6 counterparties, and shareholders in the identified financial holding company,
7 then the Secretary must take action under section 1604(a), the Corporation must act in
8 accordance with section 1604(b), and the Corporation may take one or more actions specified in
9 section 1604(c) in accordance with the requirements of that subsection.

10 (c) DOCUMENTATION AND REVIEW.—

11 (1) IN GENERAL.—The Secretary shall—

12 (A) document any determination under subsection (b); and,

13 (B) retain the documentation for review under paragraph (2).

14 (2) GAO REVIEW.—The Comptroller General of the United States shall review
15 and report to the Congress on any determination under subsection (b), including:

16 (A) the basis for the determination;

17 (B) the purpose for which any action was taken pursuant thereto; and

18 (C) the likely effect of the determination and such action on the incentives
19 and conduct of identified financial holding companies and their creditors,
20 counterparties, and shareholders.

21 (3) REPORT TO CONGRESS.—Within 30 days after a determination is made under
22 subsection (b), the Secretary shall provide written notice of the determination to the
23 Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on

1 Financial Services of the House of Representatives. The notice shall include a
2 description of the basis for the determination.

3 (d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), an identified
4 financial holding company shall be considered to be in default or in danger of default if any of
5 the following conditions exist, as determined in accordance with that subsection:

6 (1) a case has been, or likely will promptly be, commenced with respect to the
7 identified financial holding company under title 11, United States Code;

8 (2) the identified financial holding company is critically undercapitalized, as such
9 term has been or may be defined by the Federal Reserve Board;

10 (3) the identified financial holding company has incurred, or is likely to incur,
11 losses that will deplete all or substantially all of its capital, and there is no reasonable
12 prospect for the company to avoid such depletion without assistance under section 1604;

13 (4) the identified financial holding company's assets are, or are likely to be, less
14 than its obligations to creditors and others; or

15 (5) the identified financial holding company is, or is likely to be, unable to pay its
16 obligations (other than those subject to a bona fide dispute) in the normal course of
17 business.

18 **SEC. 1604. RESOLUTION; STABILIZATION.**

19 (a) APPOINTMENT OF RECEIVER.—

20 (1) APPROVAL OF CORPORATION AND FEDERAL RESERVE BOARD.—Upon the
21 Secretary making a determination in accordance with section 1603(b), the Secretary shall
22 appoint the Corporation as receiver or qualified receiver for the covered financial
23 company. There shall be a strong presumption that the Secretary will appoint the

1 Corporation as receiver. The presumption may be overcome only if the Secretary, the
2 Federal Reserve Board, and the Corporation agree that the appointment of a qualified
3 receiver is necessary to avoid or mitigate serious adverse effects on financial stability.

4 (b) CONSULTATION.—The Corporation, as receiver or qualified receiver—

5 (1) shall consult with the regulators of the covered financial company and its
6 covered subsidiaries for purposes of ensuring an orderly resolution of the covered
7 financial company;

8 (2) may consult with, or under section 1609(a)(1)(B)(v) or section 1609(a)(1)(K)
9 acquire services of, any outside experts as appropriate to inform and aid the Corporation
10 in the resolution process; and

11 (3) shall consult with the primary regulators of any subsidiaries of the covered
12 financial company that are not covered subsidiaries as described in section
13 1602(9)(B)(iv) and coordinate with such regulators regarding the treatment of such
14 solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under
15 other governmental authority, as appropriate.

16 (c) EMERGENCY STABILIZATION AFTER APPOINTMENT OF RECEIVER OR QUALIFIED
17 RECEIVER.— Upon the Secretary appointing the Corporation as receiver or qualified receiver
18 under subsection (a), the Corporation may, in its corporate capacity and as an agency of the
19 United States, with the approval of the Secretary and subject to the conditions in subsections (d)
20 through (e), take the following actions under such terms and conditions that the Corporation and
21 the Secretary jointly deem appropriate:

22 (1) making loans to, or purchasing any debt obligation of, the covered financial
23 company or any covered subsidiary;

1 (2) purchasing assets of the covered financial company or any covered subsidiary
2 directly or through an entity established by the Corporation for such purpose;

3 (3) assuming or guaranteeing the obligations of the covered financial company or
4 any covered subsidiary to one or more third parties;

5 (4) acquiring any type of equity interest or security of the covered financial
6 company or any covered subsidiary;

7 (5) taking a lien on any or all assets of the covered financial company or any
8 covered subsidiary, including a first priority lien on all unencumbered assets of the
9 company or any covered subsidiary to secure repayment of any transactions conducted
10 under this subsection; or

11 (6) selling or transferring all, or any part thereof, of such acquired assets,
12 liabilities, obligations, equity interests or securities of the covered financial company or
13 any covered subsidiary.

14 (d) MANDATORY TERMS AND CONDITIONS FOR ALL STABILIZATION ACTIONS.— The
15 Corporation as receiver or qualified receiver is authorized to take the stabilization actions listed
16 in subsection (c) only if—

17 (1) the Secretary and the Corporation determine that such action is necessary for
18 the purpose of financial stability and not for the purpose of preserving the covered
19 financial company;

20 (2) the Corporation ensures that the shareholders of a covered financial company
21 do not receive payment until after all other claims are fully paid;

22 (3) the Corporation ensures that unsecured creditors bear losses; and

23 (4) the Corporation ensures that management responsible for the failed condition

1 of the covered financial company is removed (if such management has not already been
2 removed at the time the Corporation is appointed as receiver or qualified receiver).

3 (e) RECOUPMENT OF FUNDS EXPENDED FOR SYSTEMIC STABILIZATION PURPOSES.—

4 Amounts expended from the Fund by the Corporation under this section shall be repaid in full to
5 the Fund from—

6 (1) AMOUNTS RECEIVED THROUGH THE RESOLUTION PROCESS.—

7 (A) the proceeds of the sale of, or income from, the assets of the covered
8 financial company; and

9 (B) the proceeds of the transfer of any securities obtained under subsection
10 (c); and

11 (2) INDUSTRY ASSESSMENTS.— If the sources described in paragraph (1) are
12 insufficient to repay the amount of the stabilization action in full, the difference shall be
13 recouped through assessments on financial companies in accordance with section
14 1609(o).

15 **SEC. 1605. JUDICIAL REVIEW.**

16 If a receiver or qualified receiver is appointed, the covered financial company may, not
17 later than 30 days thereafter, bring an action in the United States district court for the judicial
18 district in which the home office of such covered financial company is located, or in the United
19 States District Court for the District of Columbia, for an order requiring that the receiver or
20 qualified receiver be removed, and the court shall, upon the merits, dismiss such action or direct
21 the receiver or qualified receiver to be removed. Review of such an action shall be limited to the
22 appointment of a receiver or qualified receiver under section 1604.

23 **SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF**

1 **RECEIVER OR QUALIFIED RECEIVER .**

2 The members of the board of directors (or body performing similar functions) of a
3 covered financial company shall not be liable to the covered financial company's shareholders or
4 creditors for acquiescing in or consenting in good faith to—

5 (1) the Secretary's appointment of the Corporation as receiver or qualified
6 receiver for the covered financial company under section 1604; or

7 (2) an acquisition, combination, or transfer of assets or liabilities under section
8 1609.

9 **SEC. 1607. TERMINATION AND EXCLUSION OF OTHER ACTIONS.**

10 The Corporation's acting as receiver or qualified receiver for a covered financial
11 company under this title shall immediately, and by operation of law, terminate any case
12 commenced with respect to the covered financial company under title 11, United States Code, or
13 any proceeding under any State insolvency law with respect to the covered financial company,
14 and no such case or proceeding may be commenced with respect to the covered financial
15 company at any time while the Corporation acts as receiver or qualified receiver for the covered
16 financial company.

17 **SEC. 1608. RULEMAKING.**

18 The Corporation may prescribe such rules or regulations it considers necessary or
19 appropriate to implement the provisions of this title.

20 **SEC. 1609 POWERS AND DUTIES OF CORPORATION.**

21 (a) **POWERS AND AUTHORITIES.—**

22 (1) **GENERAL POWERS.—**

23 (A) **SUCCESSOR TO COVERED FINANCIAL COMPANY.—**The Corporation

1 shall, upon appointment as receiver or qualified receiver for a covered financial
2 company under section 1604, and by operation of law, succeed to—

3 (i) all rights, titles, powers, and privileges of the covered financial
4 company, and of any stockholder, member, officer, or director of such
5 institution with respect to the covered financial company and the assets of
6 the covered financial company; and

7 (ii) title to the books, records, and assets of any previous receiver
8 or other legal custodian of such covered financial company.

9 (B) OPERATE THE COVERED FINANCIAL COMPANY.—The Corporation as
10 receiver or qualified receiver for a covered financial company may—

11 (i) take over the assets of and operate the covered financial
12 company with all the powers of the members or shareholders, the
13 directors, and the officers of the covered financial company and conduct
14 all business of the covered financial company;

15 (ii) collect all obligations and money due the covered financial
16 company;

17 (iii) perform all functions of the covered financial company in the
18 name of the covered financial company;

19 (iv) preserve and conserve the assets and property of the covered
20 financial company; and

21 (v) provide by contract for assistance in fulfilling any function,
22 activity, action, or duty of the Corporation as receiver or qualified
23 receiver.

1 (C) FUNCTIONS OF COVERED FINANCIAL COMPANY’S OFFICERS, DIRECTORS,
2 AND SHAREHOLDERS.—

3 (i) IN GENERAL.—The Corporation may provide for the exercise of
4 any function by any member or stockholder, director, or officer of any
5 covered financial company for which the Corporation has been appointed
6 as receiver or qualified receiver under this section.

7 (ii) PRESUMPTION.—There shall be a strong presumption that the
8 Corporation, as receive or qualified receiver, will remove management
9 responsible for the failed condition of the covered financial company (if
10 such management has not already been removed at the time the
11 Corporation is appointed as receiver or qualified receiver).

12 (D) POWERS OF AND DURATION AS QUALIFIED RECEIVER.—

13 (i) IN GENERAL.—The Corporation may, as qualified receiver, and
14 subject to all legally enforceable and perfected security interests in the
15 assets of the covered financial company, take such action as may be—

16 (I) necessary to put the covered financial company in a
17 sound and solvent condition; and

18 (II) appropriate to carry on the business of the covered
19 financial company and preserve and conserve the assets and
20 property of the covered financial company.

21 (ii) DURATION.—The status of the Corporation as qualified
22 receiver shall terminate at the end of the 2-year period following the date
23 of its appointment as qualified receiver, unless the Corporation, with the

1 approval of the Secretary and the Federal Reserve Board, terminates the
2 qualified receivership before the end of the 2-year period. At the end of
3 the two-year period, the qualified receivership shall become a receivership
4 with the Corporation as receiver.

5 (iii) EXTENSION OF QUALIFIED RECEIVERSHIP.—The Corporation
6 may, with the approval of the Secretary and the Federal Reserve Board,
7 extend the qualified receivership for 3 additional 1-year periods beyond
8 the initial two-year period if necessary to promote financial stability.

9 (E) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as
10 receiver, and subject to all legally enforceable and perfected security interests,
11 place the covered financial company in liquidation and proceed to realize upon
12 the assets of the covered financial company in such manner as the Corporation
13 deems appropriate, including through the sale of assets, the transfer of assets to a
14 bridge financial company established under subsection (h), or the exercise of any
15 other rights or privileges granted to the receiver under this section.

16 (F) ORGANIZATION OF NEW COMPANIES.—The Corporation as receiver
17 may organize a bridge financial company under subsection (h).

18 (G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

19 (i) IN GENERAL.—Subject to clause (ii), the Corporation as receiver
20 or qualified receiver may—

21 (I) merge the covered financial company with another
22 company; or

23 (II) transfer any asset or liability of the covered financial

1 company (including assets and liabilities associated with any trust
2 or custody business) without obtaining any approval, assignment,
3 or consent with respect to such transfer.

4 (ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

5 (I) IN GENERAL.—If a transaction described in clause (i)
6 requires approval by a Federal agency, the transaction may not be
7 consummated before the 5th calendar day after the date of approval
8 by the Federal agency responsible for such approval with respect
9 thereto. If, in connection with any such approval, a report on
10 competitive factors is required, the Federal agency responsible for
11 such approval shall promptly notify the Attorney General of the
12 proposed transaction and the Attorney General shall provide the
13 required report within 10 days of the request. If a filing is required
14 under the Hart-Scott-Rodino Antitrust Improvements Act of 1976
15 with the Department of Justice or the Federal Trade Commission,
16 the waiting period shall expire not later than the 30th day
17 following such filing notwithstanding any other provision of
18 Federal law or any attempt by any Federal agency to extend such
19 waiting period, and no further request for information by any
20 Federal agency shall be permitted.

21 (II) EMERGENCY.—If the Secretary in consultation with the
22 Chairman of the Federal Reserve Board has found that the
23 Corporation must act immediately to prevent the probable failure

1 of 1 or more of the covered financial companies involved, the
2 approvals and filings referred to in subclause (I) shall not be
3 required and the transactions may be consummated immediately by
4 the Corporation.

5 (H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver or
6 qualified receiver, shall, to the extent funds are available, pay all valid obligations
7 of the covered financial company that are due and payable at the time of the
8 appointment of the Corporation as receiver or qualified receiver in accordance
9 with the prescriptions and limitations of this title.

10 (I) SUBPOENA AUTHORITY.—

11 (i) IN GENERAL.—The Corporation may, for purposes of carrying
12 out any power, authority, or duty with respect to a covered financial
13 company (including determining any claim against the covered financial
14 company and determining and realizing upon any asset of any person in
15 the course of collecting money due the covered financial company),
16 exercise any power established under section 8(n) of the Federal Deposit
17 Insurance Act as if the covered financial company were an insured
18 depository institution.

19 (ii) RULE OF CONSTRUCTION.—This section shall not be construed
20 as limiting any rights that the Corporation, in any capacity, might
21 otherwise have to exercise any powers described in clause (i) under any
22 other provision of law.

23 (J) INCIDENTAL POWERS.—The Corporation, as receiver or qualified

1 receiver, may—

2 (i) exercise all powers and authorities specifically granted to
3 receivers or qualified receivers under this section and such incidental
4 powers as shall be necessary to carry out such powers; and

5 (ii) take any action authorized by this section, which the
6 Corporation determines is in the best interests of the covered financial
7 company, its customers, its creditors, its counterparties, or the stability of
8 the financial system.

9 (K) UTILIZATION OF PRIVATE SECTOR.— In carrying out its responsibilities
10 in the management and disposition of assets from a covered financial company,
11 the Corporation, as receiver or qualified receiver, may utilize the services of
12 private persons, including real estate and loan portfolio asset management,
13 property management, auction marketing, legal, and brokerage services, if such
14 services are available in the private sector and the Corporation determines
15 utilization of such services is practicable, efficient, and cost effective.

16 (L) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—
17 Notwithstanding any other provision of law, the Corporation as receiver or
18 qualified receiver for a covered financial company pursuant to this section and its
19 succession, by operation of law, to the rights, titles, powers, and privileges
20 described in subparagraph (A) shall terminate all rights and claims that the
21 stockholders and creditors of the covered financial company may have against the
22 assets of the covered financial company or the Corporation arising out of their
23 status as stockholders or creditors, except for their right to payment, resolution, or

1 other satisfaction of their claims, as permitted under this section. The Corporation
2 shall ensure that shareholders and unsecured creditors bear losses, consistent with
3 the priority of claims provisions in section 1609(b).

4 (M) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The
5 Corporation as receiver or qualified receiver for a covered financial company
6 shall coordinate with the appropriate foreign financial authorities regarding the
7 resolution of subsidiaries of the covered financial company that are established in
8 a country other than the United States.

9 (2) AUTHORITY OF CORPORATION TO DETERMINE CLAIMS.—

10 (A) IN GENERAL.—The Corporation may, as receiver, determine claims in
11 accordance with the requirements of this subsection and regulations prescribed
12 under paragraph (3).

13 (B) NOTICE REQUIREMENTS.—The receiver, in any case involving the
14 liquidation or winding up of the affairs of a covered financial company, shall—

15 (i) promptly publish a notice to the covered financial company's
16 creditors to present their claims, together with proof, to the receiver by a
17 date specified in the notice which shall be not less than 90 days after the
18 publication of such notice; and

19 (ii) republish such notice approximately 1 month and 2 months,
20 respectively, after the publication under clause (i).

21 (C) MAILING REQUIRED.—The receiver shall mail a notice similar to the
22 notice published under subparagraph (B)(i) at the time of such publication to any
23 creditor shown on the covered financial company's books—

1 (i) at the creditor's last address appearing in such books; or

2 (ii) upon discovery of the name and address of a claimant not
3 appearing on the covered financial company's books, within 30 days after
4 the discovery of such name and address.

5 (3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

6 (A) IN GENERAL.— Subject to subsection (b), the Corporation shall
7 prescribe rules and regulations regarding the allowance or disallowance of claims
8 by the Corporation and providing for administrative determination of claims and
9 review of such determination.

10 (B) EXISTING RULES.— The Corporation may elect to use the regulations
11 adopted pursuant to the provisions of section 11 of the Federal Deposit Insurance
12 Act with respect to the determination of claims for a covered financial company
13 as if the covered financial company were an insured depository institution.

14 (4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

15 (A) DETERMINATION PERIOD.—

16 (i) IN GENERAL.—Before the end of the 180-day period beginning
17 on the date any claim against a covered financial company is filed with the
18 Corporation as receiver, the Corporation shall determine whether to allow
19 or disallow the claim and shall notify the claimant of any determination
20 with respect to such claim.

21 (ii) EXTENSION OF TIME.—The period described in clause (i) may
22 be extended by a written agreement between the claimant and the
23 Corporation.

1 (iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause
2 (i) shall be deemed to be satisfied if the notice of any determination with
3 respect to any claim is mailed to the last address of the claimant which
4 appears—

5 (I) on the covered financial company's books;

6 (II) in the claim filed by the claimant; or

7 (III) in documents submitted in proof of the claim.

8 (iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed
9 under clause (i) is disallowed, the notice to the claimant shall contain—

10 (I) a statement of each reason for the disallowance; and

11 (II) the procedures available for obtaining agency review of
12 the determination to disallow the claim or judicial determination of
13 the claim.

14 (B) ALLOWANCE OF PROVEN CLAIM.—The Corporation shall allow
15 any claim received on or before the date specified in the notice published
16 under paragraph (2)(B)(i) by the Corporation from any claimant which is
17 proved to the satisfaction of the Corporation.

18 (C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

19 (i) IN GENERAL.—Except as provided in clause (ii), claims filed
20 after the date specified in the notice published under paragraph (2)(B)(i)
21 shall be disallowed and such disallowance shall be final.

22 (ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect
23 to any claim filed by any claimant after the date specified in the notice

1 published under paragraph (2)(B)(i) and such claim may be considered by
2 the receiver if—

3 (I) the claimant did not receive notice of the appointment of
4 the receiver in time to file such claim before such date; and

5 (II) such claim is filed in time to permit payment of such
6 claim.

7 (D) AUTHORITY TO DISALLOW CLAIMS.—

8 (i) IN GENERAL.—The Corporation may disallow any portion of
9 any claim by a creditor or claim of security, preference, or priority which
10 is not proved to the satisfaction of the Corporation.

11 (ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the
12 case of a claim of a creditor against a covered financial company which is
13 secured by any property or other asset of such covered financial company,
14 the receiver—

15 (I) may treat the portion of such claim which exceeds an
16 amount equal to the fair market value of such property or other
17 asset as an unsecured claim against the covered financial company;
18 and

19 (II) may not make any payment with respect to such
20 unsecured portion of the claim other than in connection with the
21 disposition of all claims of unsecured creditors of the covered
22 financial company.

23 (iii) EXCEPTIONS.—No provision of this paragraph shall apply with

1 respect to—

2 (I) any extension of credit from any Federal Reserve bank,
3 or the Corporation, to any covered financial company; or

4 (II) subject to clause (ii), any legally enforceable or
5 perfected security interest in the assets of the covered financial
6 company securing any such extension of credit.

7 (E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH

8 (D).—No court may review the Corporation determination pursuant to
9 subparagraph (D) to disallow a claim.

10 (F) LEGAL EFFECT OF FILING.—

11 (i) STATUTE OF LIMITATION TOLLED.—For purposes of any
12 applicable statute of limitations, the filing of a claim with the Corporation
13 shall constitute a commencement of an action.

14 (ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9),
15 the filing of a claim with the Corporation shall not prejudice any right of
16 the claimant to continue any action which was filed before the
17 appointment of the Corporation as receiver for the covered financial
18 company.

19 (5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

20 (A) IN GENERAL.—Before the end of the 60-day period beginning on the
21 earlier of—

22 (i) the end of the period described in paragraph (4)(A)(i) (or, if
23 extended by agreement of the Corporation and the claimant, the period

1 described in paragraph (4)(A)(ii)) with respect to any claim against a
2 covered financial company for which the Corporation is receiver; or

3 (ii) the date of any notice of disallowance of such claim pursuant to
4 paragraph (4)(A)(i),

5 the claimant may file suit on a claim (or continue an action commenced before the
6 appointment of the receiver) in the district or territorial court of the United States
7 for the district within which the covered financial company's principal place of
8 business is located or the United States District Court for the District of Columbia
9 (and such court shall have jurisdiction to hear such claim).

10 (B) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such
11 claim (or continue an action commenced before the appointment of the receiver)
12 before the end of the 60-day period described in subparagraph (A), the claim shall
13 be deemed to be disallowed (other than any portion of such claim which was
14 allowed by the receiver) as of the end of such period, such disallowance shall be
15 final, and the claimant shall have no further rights or remedies with respect to
16 such claim.

17 (6) EXPEDITED DETERMINATION OF CLAIMS.—

18 (A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a
19 procedure for expedited relief outside of the routine claims process established
20 under paragraph (4) for claimants who—

21 (i) allege the existence of legally valid and enforceable or perfected
22 security interests in assets of any covered financial company for which the
23 Corporation has been appointed as receiver; and

1 (ii) allege that irreparable injury will occur if the routine claims
2 procedure is followed.

3 (B) DETERMINATION PERIOD.—Before the end of the 90-day period
4 beginning on the date any claim is filed in accordance with the procedures
5 established pursuant to subparagraph (A), the Corporation shall—

6 (i) determine—

7 (I) whether to allow or disallow such claim; or

8 (II) whether such claim should be determined pursuant to
9 the procedures established pursuant to paragraph (4); and

10 (ii) notify the claimant of the determination, and if the claim is
11 disallowed, provide a statement of each reason for the disallowance and
12 the procedure for obtaining judicial determination.

13 (C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a
14 request for expedited relief shall be permitted to file a suit, or to continue such a
15 suit filed before the appointment of the Corporation as receiver, seeking a
16 determination of the claimant's rights with respect to such security interest after
17 the earlier of—

18 (i) the end of the 90-day period beginning on the date of the filing
19 of a request for expedited relief; or

20 (ii) the date the Corporation denies the claim.

21 (D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C)
22 is not filed, or the motion to renew a previously filed suit is not made, before the
23 end of the 30-day period beginning on the date on which such action or motion

1 may be filed in accordance with subparagraph (B), the claim shall be deemed to
2 be disallowed as of the end of such period (other than any portion of such claim
3 which was allowed by the receiver), such disallowance shall be final, and the
4 claimant shall have no further rights or remedies with respect to such claim.

5 (E) LEGAL EFFECT OF FILING.—

6 (i) STATUTE OF LIMITATION TOLLED.—For purposes of any
7 applicable statute of limitations, the filing of a claim with the receiver
8 shall constitute a commencement of an action.

9 (ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9),
10 the filing of a claim with the receiver shall not prejudice any right of the
11 claimant to continue any action which was filed before the appointment of
12 the Corporation as receiver for the covered financial company.

13 (7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends
14 to diminish or defeat the interest of the Corporation as receiver in any asset acquired by
15 the receiver under this section shall be valid against the receiver unless such agreement is
16 in writing and executed by an authorized officer or representative of the covered financial
17 company.

18 (8) PAYMENT OF CLAIMS.—

19 (A) IN GENERAL. —The Corporation as receiver may, in its discretion and
20 to the extent funds are available, pay creditor claims, in such manner and amounts
21 as are authorized under this section, which are—

22 (i) allowed by the receiver;

23 (ii) approved by the Corporation pursuant to a final determination

1 pursuant to paragraph (6); or

2 (ii) determined by the final judgment of any court of competent
3 jurisdiction.

4 (B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the
5 receiver’s sole discretion and to the extent otherwise permitted by this section,
6 pay dividends on proven claims at any time, and no liability shall attach to the
7 Corporation (in the Corporation’s capacity as receiver), by reason of any such
8 payment, for failure to pay dividends to a claimant whose claim is not proved at
9 the time of any such payment.

10 (C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may
11 prescribe such rules, including definitions of terms, as it deems appropriate to
12 establish a single uniform interest rate for, or to make payments of post
13 insolvency interest to creditors holding proven claims against the receivership
14 estates of a covered financial company following satisfaction by the receiver of
15 the principal amount of all creditor claims.

16 (9) SUSPENSION OF LEGAL ACTIONS.—

17 (A) IN GENERAL.—After the appointment of the Corporation as receiver or
18 qualified receiver for a covered financial company, the Corporation may request a
19 stay for a period not to exceed—

20 (i) 45 days, in the case of any qualified receiver; and

21 (ii) 90 days, in the case of any receiver,
22 in any non-criminal judicial action or proceeding to which such covered financial
23 company is or becomes a party.

1 (B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request
2 by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal
3 judicial action or proceeding in any court with jurisdiction of such action or
4 proceeding, the court shall grant such stay as to all parties.

5 (10) ADDITIONAL RIGHTS AND DUTIES.—

6 (A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any
7 final unappealable judgment of any court of competent jurisdiction which was
8 rendered before the appointment of the Corporation as receiver or qualified
9 receiver.

10 (B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable
11 judgment, the Corporation as receiver or qualified receiver shall—

12 (i) have all the rights and remedies available to the covered
13 financial company (before the appointment of the receiver or qualified
14 receiver under section 1604) and the Corporation, including but not
15 limited to removal to Federal court and all appellate rights; and

16 (ii) not be required to post any bond in order to pursue such
17 remedies.

18 (C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may
19 issue by any court upon assets in the possession of the receiver.

20 (D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in
21 this subsection, no court shall have jurisdiction over—

22 (i) any claim or action for payment from, or any action seeking a
23 determination of rights with respect to, the assets of any covered financial

1 company for which the Corporation has been appointed receiver, including
2 any assets which the Corporation may acquire from itself as such receiver;
3 or

4 (ii) any claim relating to any act or omission of such covered
5 financial company or the Corporation as receiver.

6 (E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or
7 authority as receiver or qualified receiver in connection with any covered
8 financial company for which the Corporation is acting as receiver or qualified
9 receiver under this section, the Corporation shall, to the greatest extent
10 practicable, conduct its operations in a manner which—

11 (i) maximizes the net present value return from the sale or
12 disposition of such assets;

13 (ii) minimizes the amount of any loss realized in the resolution of
14 cases;

15 (iii) minimizes the cost to the general fund of the Treasury;

16 (iv) mitigates the potential for serious adverse effects to the
17 financial system and the U.S. economy;

18 (v) ensures timely and adequate competition and fair and
19 consistent treatment of offerors; and

20 (vi) prohibits discrimination on the basis of race, sex, or ethnic
21 groups in the solicitation and consideration of offers.

22 (11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

23 (A) IN GENERAL.—Notwithstanding any provision of any contract, the

1 applicable statute of limitations with regard to any action brought by the
2 Corporation as receiver or qualified receiver shall be—

3 (i) in the case of any contract claim, the longer of—

4 (I) the 6-year period beginning on the date the claim
5 accrues; or

6 (II) the period applicable under State law; and

7 (ii) in the case of any tort claim, the longer of—

8 (I) the 3-year period beginning on the date the claim
9 accrues; or

10 (II) the period applicable under State law.

11 (B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For
12 purposes of subparagraph (A), the date on which the statute of limitations begins
13 to run on any claim described in such subparagraph shall be the later of—

14 (i) the date of the appointment of the Corporation as receiver or
15 qualified receiver under this title; or

16 (ii) the date on which the cause of action accrues.

17 (C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

18 (i) IN GENERAL.—In the case of any tort claim described in clause
19 (ii) for which the statute of limitation applicable under State law with
20 respect to such claim has expired not more than 5 years before the
21 appointment of the Corporation as receiver or qualified receiver, the
22 Corporation may bring an action as receiver or qualified receiver on such
23 claim without regard to the expiration of the statute of limitation

1 applicable under State law.

2 (ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a
3 claim arising from fraud, intentional misconduct resulting in unjust
4 enrichment, or intentional misconduct resulting in substantial loss to the
5 covered financial company.

6 (12) FRAUDULENT TRANSFERS.—

7 (A) IN GENERAL.—The Corporation, as receiver or qualified receiver for
8 any covered financial company, may avoid a transfer of any interest of an
9 institution-affiliated party, or any person who the Corporation determines is a
10 debtor of the covered financial company, in property, or any obligation incurred
11 by such party or person, that was made within 5 years of the date on which the
12 Corporation was appointed receiver or qualified receiver if such party or person
13 voluntarily or involuntarily made such transfer or incurred such liability with the
14 intent to hinder, delay, or defraud the covered financial company or the
15 Corporation.

16 (B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under
17 subparagraph (A), the Corporation may recover, for the benefit of the covered
18 financial company, the property transferred or, if a court so orders, the value of
19 such property (at the time of such transfer) from—

20 (i) the initial transferee of such transfer or the institution-affiliated
21 party or person for whose benefit such transfer was made; or

22 (ii) any immediate or mediate transferee of any such initial
23 transferee.

1 (C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not
2 recover under subparagraph (B)—

3 (i) any transfer that takes for value, including satisfaction or
4 securing of a present or antecedent debt, in good faith, or

5 (ii) any immediate or mediate good faith transferee of such
6 transferee.

7 (D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as
8 receiver or qualified receiver of a covered financial company under this
9 subsection shall be superior to any rights of a trustee or any other party (other
10 than any party which is a Federal agency) under title 11, United States Code.

11 (E) DEFINITION.—For purposes of this subsection, the term
12 “institution-affiliated party” means—

13 (i) any director, officer, employee, or controlling stockholder of, or
14 agent for, a covered financial company;

15 (ii) any shareholder, consultant, joint venture partner, and any
16 other person as determined by the Corporation (by regulation or
17 otherwise) who participates in the conduct of the affairs of a covered
18 financial company; and

19 (iii) any independent contractor (including any attorney, appraiser,
20 or accountant) who knowingly or recklessly participates in—

21 (I) any violation of any law or regulation;

22 (II) any breach of fiduciary duty; or

23 (III) any unsafe or unsound practice,

1 which caused or is likely to cause more than a minimal financial loss to, or
2 a significant adverse effect on, the covered financial company.

3 (13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to
4 paragraph (14), any court of competent jurisdiction may, at the request of the
5 Corporation, issue an order in accordance with Rule 65 of the Federal Rules of Civil
6 Procedure, including an order placing the assets of any person designated by the
7 Corporation under the control of the court and appointing a trustee to hold such assets.

8 (14) STANDARDS.—

9 (A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall
10 apply with respect to any proceeding under paragraph (13) without regard to the
11 requirement of such rule that the applicant show that the injury, loss, or damage is
12 irreparable and immediate.

13 (B) STATE PROCEEDING.—If, in the case of any proceeding in a State
14 court, the court determines that rules of civil procedure available under the laws
15 of such State provide substantially similar protections to such party's right to due
16 process as Rule 65 (as modified with respect to such proceeding by subparagraph
17 (A)), the relief sought by the Corporation pursuant to paragraph (14) may be
18 requested under the laws of such State.

19 (15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY
20 THE CORPORATION AS RECEIVER OR QUALIFIED RECEIVER.—Notwithstanding any other
21 provision of this subsection, any final and unappealable judgment for monetary damages
22 entered against the Corporation as receiver or qualified receiver for a covered financial
23 company for the breach of an agreement executed or approved by the Corporation after

1 the date of its appointment shall be paid as an administrative expense of the receiver or
2 the qualified receiver. Nothing in this paragraph shall be construed to limit the power of
3 a receiver or qualified receiver to exercise any rights under contract or law, including to
4 terminate, breach, cancel, or otherwise discontinue such agreement.

5 (16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

6 (A) IN GENERAL.—The Corporation as receiver or qualified receiver shall,
7 consistent with the accounting and reporting practices and procedures established
8 by the Corporation, maintain a full accounting of each qualified receivership,
9 receivership, or other disposition of any covered financial company.

10 (B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership
11 or qualified receivership to which the Corporation was appointed, the Corporation
12 shall make an annual accounting or report, as appropriate, available to the
13 Secretary and the Comptroller General of the United States.

14 (C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to
15 subparagraph (B) shall be made available by the Corporation upon request to any
16 member of the public.

17 (D) RECORDKEEPING REQUIREMENT.—

18 (i) IN GENERAL.—Except as provided in clause (ii), after the end of
19 the 6-year period beginning on the date the Corporation is appointed as
20 receiver of a covered financial company the Corporation may destroy any
21 records of such covered financial company which the Corporation, in the
22 Corporation's discretion, determines to be unnecessary unless directed not
23 to do so by a court of competent jurisdiction or governmental agency, or

1 prohibited by law.

2 (ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation
3 may destroy records of a covered financial company which are at least 10
4 years old as of the date on which the Corporation is appointed as the
5 receiver of such company in accordance with clause (i) at any time after
6 such appointment is final, without regard to the 6-year period of limitation
7 contained in clause (i).

8 (b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

9 (1) IN GENERAL.—Unsecured claims against a covered financial company, or the
10 receiver for such covered financial company under this section, that are proven to the
11 satisfaction of the receiver shall have priority in the following order:

12 (A) Administrative expenses of the receiver.

13 (B) Any amounts owed to the United States, unless the United States
14 agrees or consents otherwise.

15 (C) Any other general or senior liability of the covered financial company
16 (which is not a liability described under subparagraph (D) or (E)).

17 (D) Any obligation subordinated to general creditors (which is not an
18 obligation described under subparagraph (E)).

19 (E) Any obligation to shareholders, members, general partners, limited
20 partners or other persons with interests in the equity of the covered financial
21 company arising as a result of their status as shareholders, members, general
22 partners, limited partners or other persons with interests in the equity of the
23 covered financial company.

1 (2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation
2 as receiver is unable to obtain unsecured credit for the covered financial company from
3 commercial sources, the Corporation as receiver may obtain credit or incur debt on the
4 part of the covered financial company which shall have priority over any or all
5 administrative expenses of the receiver under paragraph (1)(A).

6 (3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall,
7 at a minimum, have a higher priority than liabilities of the covered financial company
8 that count as regulatory capital.

9 (4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial
10 company that are similarly situated under paragraph (1) shall be treated in a similar
11 manner, except that the receiver may take any action (including making payments) that
12 does not comply with this subsection, if—

13 (A) the Corporation determines that such action is necessary to maximize
14 the value of the assets of the covered financial company, to maximize the present
15 value return from the sale or other disposition of the assets of the covered
16 financial company, to minimize the amount of any loss realized upon the sale or
17 other disposition of the assets of the covered financial company, or to contain or
18 address serious adverse effects on financial stability or the U.S. economy; and

19 (B) all claimants that are similarly situated under paragraph (1) receive not
20 less than the amount provided in subsection (d)(2).

21 (3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured
22 claims, except to the extent that the security is insufficient to satisfy the claim and then
23 only with regard to the difference between the claim and the amount realized from the

1 security.

2 (4) DEFINITIONS.—As used in this subsection, the term “administrative expenses
3 of the receiver” includes—

4 (A) the actual, necessary costs and expenses incurred by the receiver in
5 preserving the assets of a covered financial company or liquidating or otherwise
6 resolving the affairs of a covered financial company for which the Corporation
7 has been appointed as receiver; and

8 (B) any obligations that the receiver determines are necessary and
9 appropriate to facilitate the smooth and orderly liquidation or other resolution of
10 the covered financial company.

11 (c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF
12 RECEIVER OR QUALIFIED RECEIVER.

13 (1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a
14 receiver or qualified receiver may have, the Corporation as receiver or qualified receiver
15 for any covered financial company may disaffirm or repudiate any contract or lease—

16 (A) to which the covered financial company is a party;

17 (B) the performance of which the receiver or qualified receiver, in the
18 receiver’s or qualified receiver’s discretion, determines to be burdensome; and

19 (C) the disaffirmance or repudiation of which the receiver or qualified
20 receiver determines, in the receiver’s or qualified receiver’s discretion, will
21 promote the orderly administration of the covered financial company’s affairs.

22 (2) TIMING OF REPUDIATION.—The receiver or qualified receiver appointed for
23 any covered financial company under section 1604 shall determine whether or not to

1 exercise the rights of repudiation under this subsection within a reasonable period
2 following such appointment.

3 (3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

4 (A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and
5 paragraphs (4), (5), and (6), the liability of the receiver or qualified receiver for
6 the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall
7 be—

8 (i) limited to actual direct compensatory damages; and

9 (ii) determined as of—

10 (I) the date of the appointment of the receiver or qualified
11 receiver; or

12 (II) in the case of any contract or agreement referred to in
13 paragraph (8), the date of the disaffirmance or repudiation of such
14 contract or agreement.

15 (B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph
16 (A), the term “actual direct compensatory damages” does not include—

17 (i) punitive or exemplary damages;

18 (ii) damages for lost profits or opportunity; or

19 (iii) damages for pain and suffering.

20 (C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL
21 CONTRACTS.—In the case of any qualified financial contract or agreement to
22 which paragraph (8) applies, compensatory damages shall be—

23 (i) deemed to include normal and reasonable costs of cover or

1 other reasonable measures of damages utilized in the industries for such
2 contract and agreement claims; and

3 (ii) paid in accordance with this subsection and subsection (d)
4 except as otherwise specifically provided in this subsection.

5 (4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

6 (A) IN GENERAL.—If the receiver or qualified receiver disaffirms or
7 repudiates a lease under which the covered financial company was the lessee, the
8 receiver or qualified receiver shall not be liable for any damages (other than
9 damages determined pursuant to subparagraph (B)) for the disaffirmance or
10 repudiation of such lease.

11 (B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor
12 under a lease to which such subparagraph applies shall—

13 (i) be entitled to the contractual rent accruing before the later of the
14 date—

15 (I) the notice of disaffirmance or repudiation is mailed; or

16 (II) the disaffirmance or repudiation becomes effective,

17 unless the lessor is in default or breach of the terms of the lease;

18 (ii) have no claim for damages under any acceleration clause or
19 other penalty provision in the lease; and

20 (iii) have a claim for any unpaid rent, subject to all appropriate
21 offsets and defenses, due as of the date of the appointment which shall be
22 paid in accordance with this subsection and subsection (d).

23 (5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

1 (A) IN GENERAL.—If the receiver or qualified receiver repudiates an
2 unexpired written lease of real property of the covered financial company under
3 which the covered financial company is the lessor and the lessee is not, as of the
4 date of such repudiation, in default, the lessee under such lease may either—

5 (i) treat the lease as terminated by such repudiation; or

6 (ii) remain in possession of the leasehold interest for the balance of
7 the term of the lease unless the lessee defaults under the terms of the lease
8 after the date of such repudiation.

9 (B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any
10 lessee under a lease described in subparagraph (A) remains in possession of a
11 leasehold interest pursuant to clause (ii) of such subparagraph—

12 (i) the lessee—

13 (I) shall continue to pay the contractual rent pursuant to the
14 terms of the lease after the date of the repudiation of such lease;

15 (II) may offset against any rent payment which accrues
16 after the date of the repudiation of the lease, any damages which
17 accrue after such date due to the nonperformance of any obligation
18 of the covered financial company under the lease after such date;
19 and

20 (ii) the receiver or qualified receiver shall not be liable to the lessee
21 for any damages arising after such date as a result of the repudiation other
22 than the amount of any offset allowed under clause (i)(II).

23 (6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

1 (A) IN GENERAL.—If the receiver or qualified receiver repudiates any
2 contract (which meets the requirements of subsection (a)(7)) for the sale of real
3 property and the purchaser of such real property under such contract is in
4 possession and is not, as of the date of such repudiation, in default, such purchaser
5 may either—

6 (i) treat the contract as terminated by such repudiation; or

7 (ii) remain in possession of such real property.

8 (B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—
9 If any purchaser of real property under any contract described in subparagraph
10 (A) remains in possession of such property pursuant to clause (ii) of such
11 subparagraph—

12 (i) the purchaser—

13 (I) shall continue to make all payments due under the
14 contract after the date of the repudiation of the contract; and

15 (II) may offset against any such payments any damages
16 which accrue after such date due to the nonperformance (after such
17 date) of any obligation of the covered financial company under the
18 contract; and

19 (ii) the receiver or qualified receiver shall—

20 (I) not be liable to the purchaser for any damages arising
21 after such date as a result of the repudiation other than the amount
22 of any offset allowed under clause (i)(II);

23 (II) deliver title to the purchaser in accordance with the

1 provisions of the contract; and

2 (III) have no obligation under the contract other than the
3 performance required under subclause (II).

4 (C) ASSIGNMENT AND SALE ALLOWED.—

5 (i) IN GENERAL.—No provision of this paragraph shall be construed
6 as limiting the right of the receiver or qualified receiver to assign the
7 contract described in subparagraph (A) and sell the property subject to the
8 contract and the provisions of this paragraph.

9 (ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment
10 and sale described in clause (i) is consummated, the receiver or qualified
11 receiver shall have no further liability under the contract described in
12 subparagraph (A) or with respect to the real property which was the
13 subject of such contract.

14 (7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

15 (A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any
16 contract for services between any person and any covered financial company for
17 which the Corporation has been appointed receiver or qualified receiver, any
18 claim of such person for services performed before the appointment of the
19 receiver or qualified receiver shall be—

20 (i) a claim to be paid in accordance with subsections (a), (b) and
21 (d); and

22 (ii) deemed to have arisen as of the date the receiver or qualified
23 receiver was appointed.

1 (B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO
2 REPUDIATION.—If, in the case of any contract for services described in
3 subparagraph (A), the receiver or qualified receiver accepts performance by the
4 other person before the receiver or qualified receiver makes any determination to
5 exercise the right of repudiation of such contract under this section—

6 (i) the other party shall be paid under the terms of the contract for
7 the services performed; and

8 (ii) the amount of such payment shall be treated as an
9 administrative expense of the receivership or qualified receivership.

10 (C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT
11 REPUDIATION.—The acceptance by any receiver or qualified receiver of services
12 referred to in subparagraph (B) in connection with a contract described in such
13 subparagraph shall not affect the right of the receiver or qualified receiver to
14 repudiate such contract under this section at any time after such performance.

15 (8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

16 (A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and
17 (10) of this subsection and notwithstanding any other provision of this section
18 (other than subsection (a)(7)), any other Federal law, or the law of any State, no
19 person shall be stayed or prohibited from exercising—

20 (i) any right such person has to cause the termination, liquidation,
21 or acceleration of any qualified financial contract with a covered financial
22 company which arises upon the appointment of the Corporation as
23 receiver for such covered financial company at any time after such

1 appointment;

2 (ii) any right under any security agreement or arrangement or other
3 credit enhancement related to one or more qualified financial contracts
4 described in clause (i).

5 (iii) any right to offset or net out any termination value, payment
6 amount, or other transfer obligation arising under or in connection with 1
7 or more contracts and agreements described in clause (i), including any
8 master agreement for such contracts or agreements.

9 (B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(9) shall apply
10 in the case of any judicial action or proceeding brought against any receiver
11 referred to in subparagraph (A), or the covered financial company for which such
12 receiver was appointed, by any party to a contract or agreement described in
13 subparagraph (A)(i) with such company.

14 (C) CERTAIN TRANSFERS NOT AVOIDABLE.—

15 (i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of
16 the Revised Statutes of the United States or any other provision of Federal
17 or State law relating to the avoidance of preferential or fraudulent
18 transfers, the Corporation, whether acting as such or as receiver or
19 qualified receiver of a covered financial company, may not avoid any
20 transfer of money or other property in connection with any qualified
21 financial contract with a covered financial company.

22 (ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not
23 apply to any transfer of money or other property in connection with any

1 qualified financial contract with a covered financial company if the
2 Corporation determines that the transferee had actual intent to hinder,
3 delay, or defraud such company, the creditors of such company, or any
4 receiver or qualified receiver appointed for such company.

5 (D) CERTAIN CONTACTS AND AGREEMENTS DEFINED.—For purposes of this
6 subsection, the following definitions shall apply:

7 (i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified
8 financial contract” means any securities contract, commodity contract,
9 forward contract, repurchase agreement, swap agreement, and any similar
10 agreement that the Corporation determines by regulation, resolution, or
11 order to be a qualified financial contract for purposes of this paragraph.

12 (ii) SECURITIES CONTRACT.—The term “securities contract”—

13 (I) means a contract for the purchase, sale, or loan of a
14 security, a certificate of deposit, a mortgage loan, any interest in a
15 mortgage loan, a group or index of securities, certificates of
16 deposit, or mortgage loans or interests therein (including any
17 interest therein or based on the value thereof) or any option on any
18 of the foregoing, including any option to purchase or sell any such
19 security, certificate of deposit, mortgage loan, interest, group or
20 index, or option, and including any repurchase or reverse
21 repurchase transaction on any such security, certificate of deposit,
22 mortgage loan, interest, group or index, or option (whether or not
23 such repurchase or reverse repurchase transaction is a “repurchase

1 agreement,” as defined in clause (v));

2 (II) does not include any purchase, sale, or repurchase
3 obligation under a participation in a commercial mortgage loan
4 unless the Corporation determines by regulation, resolution, or
5 order to include any such agreement within the meaning of such
6 term;

7 (III) means any option entered into on a national securities
8 exchange relating to foreign currencies;

9 (IV) means the guarantee (including by novation) by or to
10 any securities clearing agency of any settlement of cash, securities,
11 certificates of deposit, mortgage loans or interests therein, group or
12 index of securities, certificates of deposit or mortgage loans or
13 interests therein (including any interest therein or based on the
14 value thereof) or option on any of the foregoing, including any
15 option to purchase or sell any such security, certificate of deposit,
16 mortgage loan, interest, group or index, or option (whether or not
17 such settlement is in connection with any agreement or transaction
18 referred to in subclauses (I) through (XII) (other than subclause
19 (II));

20 (V) means any margin loan;

21 (VI) means any extension of credit for the clearance or
22 settlement of securities transactions;

23 (VII) means any loan transaction coupled with a securities

1 collar transaction, any prepaid securities forward transaction, or
2 any total return swap transaction coupled with a securities sale
3 transaction;

4 (VIII) means any other agreement or transaction that is
5 similar to any agreement or transaction referred to in this clause;

6 (IX) means any combination of the agreements or
7 transactions referred to in this clause;

8 (X) means any option to enter into any agreement or
9 transaction referred to in this clause;

10 (XI) means a master agreement that provides for an
11 agreement or transaction referred to in subclause (I), (III), (IV),
12 (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements
13 to any such master agreement, without regard to whether the
14 master agreement provides for an agreement or transaction that is
15 not a securities contract under this clause, except that the master
16 agreement shall be considered to be a securities contract under this
17 clause only with respect to each agreement or transaction under the
18 master agreement that is referred to in subclause (I), (III), (IV),
19 (V), (VI), (VII), (VIII), (IX), or (X); and

20 (XII) means any security agreement or arrangement or
21 other credit enhancement related to any agreement or transaction
22 referred to in this clause, including any guarantee or
23 reimbursement obligation in connection with any agreement or

1 transaction referred to in this clause.

2 (iii) COMMODITY CONTRACT.—The term “commodity contract”

3 means—

4 (I) with respect to a futures commission merchant, a
5 contract for the purchase or sale of a commodity for future delivery
6 on, or subject to the rules of, a contract market or board of trade;

7 (II) with respect to a foreign futures commission merchant,
8 a foreign future;

9 (III) with respect to a leverage transaction merchant, a
10 leverage transaction;

11 (IV) with respect to a clearing organization, a contract for
12 the purchase or sale of a commodity for future delivery on, or
13 subject to the rules of, a contract market or board of trade that is
14 cleared by such clearing organization, or commodity option traded
15 on, or subject to the rules of, a contract market or board of trade
16 that is cleared by such clearing organization;

17 (V) with respect to a commodity options dealer, a
18 commodity option;

19 (VI) any other agreement or transaction that is similar to
20 any agreement or transaction referred to in this clause;

21 (VII) any combination of the agreements or transactions
22 referred to in this clause;

23 (VIII) any option to enter into any agreement or transaction

1 referred to in this clause;

2 (IX) a master agreement that provides for an agreement or
3 transaction referred to in subclause (I), (II), (III), (IV), (V), (VI),
4 (VII), or (VIII), together with all supplements to any such master
5 agreement, without regard to whether the master agreement
6 provides for an agreement or transaction that is not a commodity
7 contract under this clause, except that the master agreement shall
8 be considered to be a commodity contract under this clause only
9 with respect to each agreement or transaction under the master
10 agreement that is referred to in subclause (I), (II), (III), (IV), (V),
11 (VI), (VII), or (VIII); or

12 (X) any security agreement or arrangement or other credit
13 enhancement related to any agreement or transaction referred to in
14 this clause, including any guarantee or reimbursement obligation in
15 connection with any agreement or transaction referred to in this
16 clause.

17 (iv) FORWARD CONTRACT.—The term “forward contract” means—

18 (I) a contract (other than a commodity contract) for the
19 purchase, sale, or transfer of a commodity or any similar good,
20 article, service, right, or interest which is presently or in the future
21 becomes the subject of dealing in the forward contract trade, or
22 product or byproduct thereof, with a maturity date more than 2
23 days after the date the contract is entered into, including a

1 repurchase or reverse repurchase transaction (whether or not such
2 repurchase or reverse repurchase transaction is a “repurchase
3 agreement”, as defined in clause (v)), consignment, lease, swap,
4 hedge transaction, deposit, loan, option, allocated transaction,
5 unallocated transaction, or any other similar agreement;

6 (II) any combination of agreements or transactions referred
7 to in subclauses (I) and (III);

8 (III) any option to enter into any agreement or transaction
9 referred to in subclause (I) or (II);

10 (IV) a master agreement that provides for an agreement or
11 transaction referred to in subclauses (I), (II), or (III), together with
12 all supplements to any such master agreement, without regard to
13 whether the master agreement provides for an agreement or
14 transaction that is not a forward contract under this clause, except
15 that the master agreement shall be considered to be a forward
16 contract under this clause only with respect to each agreement or
17 transaction under the master agreement that is referred to in
18 subclause (I), (II), or (III); or

19 (V) any security agreement or arrangement or other credit
20 enhancement related to any agreement or transaction referred to in
21 subclause (I), (II), (III), or (IV), including any guarantee or
22 reimbursement obligation in connection with any agreement or
23 transaction referred to in any such subclause.

1 (v) REPURCHASE AGREEMENT.—The term “repurchase agreement”
2 (which definition also applies to a reverse repurchase agreement)—

3 (I) means an agreement, including related terms, which
4 provides for the transfer of one or more certificates of deposit,
5 mortgage-related securities (as such term is defined in the
6 Securities Exchange Act of 1934), mortgage loans, interests in
7 mortgage-related securities or mortgage loans, eligible bankers’
8 acceptances, qualified foreign government securities (which for
9 purposes of this clause shall mean a security that is a direct
10 obligation of, or that is fully guaranteed by, the central government
11 of a member of the Organization for Economic Cooperation and
12 Development as determined by regulation or order adopted by the
13 Federal Reserve Board) or securities that are direct obligations of,
14 or that are fully guaranteed by, the United States or any agency of
15 the United States against the transfer of funds by the transferee of
16 such certificates of deposit, eligible bankers’ acceptances,
17 securities, mortgage loans, or interests with a simultaneous
18 agreement by such transferee to transfer to the transferor thereof
19 certificates of deposit, eligible bankers’ acceptances, securities,
20 mortgage loans, or interests as described above, at a date certain
21 not later than 1 year after such transfers or on demand, against the
22 transfer of funds, or any other similar agreement;

23 (II) does not include any repurchase obligation under a

1 participation in a commercial mortgage loan unless the
2 Corporation determines by regulation, resolution, or order to
3 include any such participation within the meaning of such term;

4 (III) means any combination of agreements or transactions
5 referred to in subclauses (I) and (IV);

6 (IV) means any option to enter into any agreement or
7 transaction referred to in subclause (I) or (III);

8 (V) means a master agreement that provides for an
9 agreement or transaction referred to in subclause (I), (III), or (IV),
10 together with all supplements to any such master agreement,
11 without regard to whether the master agreement provides for an
12 agreement or transaction that is not a repurchase agreement under
13 this clause, except that the master agreement shall be considered to
14 be a repurchase agreement under this subclause only with respect
15 to each agreement or transaction under the master agreement that is
16 referred to in subclause (I), (III), or (IV); and

17 (VI) means any security agreement or arrangement or other
18 credit enhancement related to any agreement or transaction
19 referred to in subclause (I), (III), (IV), or (V), including any
20 guarantee or reimbursement obligation in connection with any
21 agreement or transaction referred to in any such subclause.

22 (vi) SWAP AGREEMENT.—The term “swap agreement” means—

23 (I) any agreement, including the terms and conditions

1 incorporated by reference in any such agreement, which is an
2 interest rate swap, option, future, or forward agreement, including
3 a rate floor, rate cap, rate collar, cross-currency rate swap, and
4 basis swap; a spot, same day-tomorrow, tomorrow-next, forward,
5 or other foreign exchange, precious metals, or other commodity
6 agreement; a currency swap, option, future, or forward agreement;
7 an equity index or equity swap, option, future, or forward
8 agreement; a debt index or debt swap, option, future, or forward
9 agreement; a total return, credit spread or credit swap, option,
10 future, or forward agreement; a commodity index or commodity
11 swap, option, future, or forward agreement; weather swap, option,
12 future, or forward agreement; an emissions swap, option, future, or
13 forward agreement; or an inflation swap, option, future, or forward
14 agreement;

15 (II) any agreement or transaction that is similar to any other
16 agreement or transaction referred to in this clause and that is of a
17 type that has been, is presently, or in the future becomes, the
18 subject of recurrent dealings in the swap or other derivatives
19 markets (including terms and conditions incorporated by reference
20 in such agreement) and that is a forward, swap, future, option or
21 spot transaction on one or more rates, currencies, commodities,
22 equity securities or other equity instruments, debt securities or
23 other debt instruments, quantitative measures associated with an

1 occurrence, extent of an occurrence, or contingency associated
2 with a financial, commercial, or economic consequence, or
3 economic or financial indices or measures of economic or financial
4 risk or value;

5 (III) any combination of agreements or transactions
6 referred to in this clause;

7 (IV) any option to enter into any agreement or transaction
8 referred to in this clause;

9 (V) a master agreement that provides for an agreement or
10 transaction referred to in subclause (I), (II), (III), or (IV), together
11 with all supplements to any such master agreement, without regard
12 to whether the master agreement contains an agreement or
13 transaction that is not a swap agreement under this clause, except
14 that the master agreement shall be considered to be a swap
15 agreement under this clause only with respect to each agreement or
16 transaction under the master agreement that is referred to in
17 subclause (I), (II), (III), or (IV); and

18 (VI) any security agreement or arrangement or other credit
19 enhancement related to any agreements or transactions referred to
20 in subclause (I), (II), (III), (IV), or (V), including any guarantee or
21 reimbursement obligation in connection with any agreement or
22 transaction referred to in any such subclause.

23 (vii) DEFINITIONS RELATING TO DEFAULT.— When used in this

1 paragraph and paragraph (10)—

2 (I) The term “default” shall mean, with respect to a covered
3 financial company, any adjudication or other official determination
4 by any court of competent jurisdiction, or other public authority
5 pursuant to which a conservator, receiver, or other legal custodian
6 is appointed; and

7 (II) The term “in danger of default” shall mean a covered
8 financial company with respect to which the Corporation or
9 appropriate State authority has determined that—

10
11 (aa) in the opinion of the Corporation or such
12 authority—

13 (i) the covered financial company is not
14 likely to be able to pay its obligations in the normal
15 course of business; and

16 (ii) there is no reasonable prospect that the
17 covered financial company will be able to pay such
18 obligations without Federal assistance; or

19 (bb) in the opinion of the Corporation or such
20 authority—

21 (i) the covered financial company has
22 incurred or is likely to incur losses that will deplete
23 all or substantially all of its capital; and

1 (ii) there is no reasonable prospect that the
2 capital will be replenished without Federal
3 assistance.

4 (viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—

5 Any master agreement for any contract or agreement described in any
6 preceding clause of this subparagraph (or any master agreement for such
7 master agreement or agreements), together with all supplements to such
8 master agreement, shall be treated as a single agreement and a single
9 qualified financial contact. If a master agreement contains provisions
10 relating to agreements or transactions that are not themselves qualified
11 financial contracts, the master agreement shall be deemed to be a qualified
12 financial contract only with respect to those transactions that are
13 themselves qualified financial contracts.

14 (ix) TRANSFER.—The term “transfer” means every mode, direct or
15 indirect, absolute or conditional, voluntary or involuntary, of disposing of
16 or parting with property or with an interest in property, including retention
17 of title as a security interest and foreclosure of the covered financial
18 company’s equity of redemption.

19 (x) PERSON.—The term “person” includes any governmental entity
20 in addition to any entity included in the definition of such term in section
21 1, title 1, United States Code.

22 (E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF QUALIFIED
23 RECEIVER.—Notwithstanding any other provision of this section (other than

1 paragraph (10) of this subsection and subsection (a)(7) of this section), any other
2 Federal law, or the law of any State, no person shall be stayed or prohibited from
3 exercising—

4 (i) any right such person has to cause the termination, liquidation,
5 or acceleration of any qualified financial contract with a covered financial
6 company in a qualified receivership based upon a default under such
7 financial contract which is enforceable under applicable noninsolvency
8 law;

9 (ii) any right under any security agreement or arrangement or other
10 credit enhancement related to one or more qualified financial contracts
11 described in clause (i); or

12 (iii) any right to offset or net out any termination values, payment
13 amounts, or other transfer obligations arising under or in connection with
14 such qualified financial contracts.

15 (F) CLARIFICATION.—No provision of law shall be construed as limiting
16 the right or power of the Corporation, or authorizing any court or agency to limit
17 or delay, in any manner, the right or power of the Corporation to transfer any
18 qualified financial contract in accordance with paragraphs (9) and (10) of this
19 subsection or to disaffirm or repudiate any such contract in accordance with
20 subsection (c)(1) of this section.

21 (G) WALKAWAY CLAUSES NOT EFFECTIVE.—

22 (i) IN GENERAL.—Notwithstanding the provisions of subparagraphs
23 (A) and (E) and sections 403 and 404 of the Federal Deposit Insurance

1 Corporation Improvement Act of 1991, no walkaway clause shall be
2 enforceable in a qualified financial contract of a covered financial
3 company in default.

4 (ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of
5 a qualified financial contract referred to in clause (i), any payment or
6 delivery obligations otherwise due from a party pursuant to the qualified
7 financial contract shall be suspended from the time the receiver is
8 appointed until the earlier of—

9 (I) the time such party receives notice that such contract has
10 been transferred pursuant to paragraph (10)(A); or

11 (II) 5:00 p.m. (eastern time) on the business day following
12 the date of the appointment of the receiver.

13 (iii) WALKAWAY CLAUSE DEFINED.—For purposes of this
14 subparagraph, the term “walkaway clause” means any provision in a
15 qualified financial contract that suspends, conditions, or extinguishes a
16 payment obligation of a party, in whole or in part, or does not create a
17 payment obligation of a party that would otherwise exist, solely because of
18 such party’s status as a nondefaulting party in connection with the
19 insolvency of a covered financial company that is a party to the contract or
20 the appointment of or the exercise of rights or powers by a receiver or
21 qualified receiver of such covered financial company, and not as a result
22 of a party’s exercise of any right to offset, setoff, or net obligations that
23 exist under the contract, any other contract between those parties, or

1 applicable law.

2 (H) RECORDKEEPING.—The Corporation, in consultation with the Federal
3 Reserve Board, may prescribe regulations requiring that the covered financial
4 company maintain such records with respect to qualified financial contracts
5 (including market valuations) as the Corporation determines to be necessary or
6 appropriate in order to assist the receiver or qualified receiver of the covered
7 financial company in being able to exercise its rights and fulfill its obligations
8 under this paragraph or paragraph (9) or (10).

9 (9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

10 (A) IN GENERAL.—In making any transfer of assets or liabilities of a
11 covered financial company in default which includes any qualified financial
12 contract, the receiver or qualified receiver for such covered financial company
13 shall either—

14 (i) transfer to one financial institution, other than a financial
15 institution for which a conservator, receiver, trustee in bankruptcy, or
16 other legal custodian has been appointed or which is otherwise the subject
17 of a bankruptcy or insolvency proceeding—

18 (I) all qualified financial contracts between any person or
19 any affiliate of such person and the covered financial company in
20 default;

21 (II) all claims of such person or any affiliate of such person
22 against such covered financial company under any such contract
23 (other than any claim which, under the terms of any such contract,

1 is subordinated to the claims of general unsecured creditors of such
2 company);

3 (III) all claims of such covered financial company against
4 such person or any affiliate of such person under any such
5 contract; and

6 (IV) all property securing or any other credit enhancement
7 for any contract described in subclause (I) or any claim described
8 in subclause (II) or (III) under any such contract; or

9 (ii) transfer none of the qualified financial contracts, claims,
10 property or other credit enhancement referred to in clause (i) (with respect
11 to such person and any affiliate of such person).

12 (B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR
13 AGENCY THEREOF.—In transferring any qualified financial contracts and related
14 claims and property under subparagraph (A)(i), the receiver or qualified receiver
15 for the covered financial company shall not make such transfer to a foreign bank,
16 financial institution organized under the laws of a foreign country, or a branch or
17 agency of a foreign bank or financial institution unless, under the law applicable
18 to such bank, financial institution, branch or agency, to the qualified financial
19 contracts, and to any netting contract, any security agreement or arrangement or
20 other credit enhancement related to one or more qualified financial contracts, the
21 contractual rights of the parties to such qualified financial contracts, netting
22 contracts, security agreements or arrangements, or other credit enhancements are
23 enforceable substantially to the same extent as permitted under this section.

1 (C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING
2 ORGANIZATION.—In the event that a receiver or qualified receiver transfers any
3 qualified financial contract and related claims, property, and credit enhancements
4 pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the
5 rules of a clearing organization, the clearing organization shall not be required to
6 accept the transferee as a member by virtue of the transfer.

7 (D) DEFINITIONS.—For purposes of this paragraph, the term “financial
8 institution” means a broker or dealer, a depository institution, a futures
9 commission merchant, a bridge financial company, or any other institution
10 determined by the Corporation by regulation to be a financial institution, and the
11 term ‘clearing organization’ has the same meaning as in section 402 of the
12 Federal Deposit Insurance Corporation Improvement Act of 1991.

13 (10) NOTIFICATION OF TRANSFER.—

14 (A) IN GENERAL.—If—

15 (i) the receiver or qualified receiver for a covered financial
16 company in default or in danger of default transfers any assets and
17 liabilities of the covered financial company; and

18 (ii) the transfer includes any qualified financial contract,
19 the receiver or qualified receiver shall notify any person who is a party to
20 any such contract of such transfer by 5:00 p.m. (eastern time) on the
21 business day following the date of the appointment of the receiver in the
22 case of a receivership, or the business day following such transfer in the
23 case of a qualified receivership.

1 (B) CERTAIN RIGHTS NOT ENFORCEABLE.—

2 (i) RECEIVERSHIP.—A person who is a party to a qualified financial
3 contract with a covered financial company may not exercise any right that
4 such person has to terminate, liquidate, or net such contract under
5 paragraph (8)(A) of this subsection solely by reason of or incidental to the
6 appointment under this section of a receiver for the covered financial
7 company (or the insolvency or financial condition of the covered financial
8 company for which the receiver has been appointed)—

9 (I) until 5:00 p.m. (eastern time) on the business day
10 following the date of the appointment of the receiver; or

11 (II) after the person has received notice that the contract has
12 been transferred pursuant to paragraph (9)(A).

13 (ii) QUALIFIED RECEIVERSHIP.—A person who is a party to a
14 qualified financial contract with a covered financial company may not
15 exercise any right such person has to terminate, liquidate, or net such
16 contract under paragraph (8)(E) of this subsection or section 403 of
17 Federal Deposit Insurance Corporation Improvement Act of 1991 solely
18 by reason of or incidental to the appointment under this section of a
19 qualified receiver for the covered financial company (or the insolvency or
20 financial condition of the covered financial company for which the
21 qualified receiver has been appointed).

22 (iii) NOTICE.—For purposes of this paragraph, the receiver or
23 qualified receiver for a covered financial company shall be deemed to

1 have notified a person who is a party to a qualified financial contract with
2 such covered financial company if the receiver or qualified receiver has
3 taken steps reasonably calculated to provide notice to such person by the
4 time specified in subparagraph (A).

5 (C) TREATMENT OF BRIDGE FINANCIAL COMPANY.— For purposes of
6 paragraph (9), a bridge financial company shall not be considered to be a financial
7 institution for which a conservator, receiver, trustee in bankruptcy, or other legal
8 custodian has been appointed or which is otherwise the subject of a bankruptcy or
9 insolvency proceeding.

10 (D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term
11 “business day” means any day other than any Saturday, Sunday, or any day on
12 which either the New York Stock Exchange or the Federal Reserve Bank of New
13 York is closed.

14 (11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In
15 exercising the rights of disaffirmance or repudiation of a receiver or qualified receiver
16 with respect to any qualified financial contract to which a covered financial company is a
17 party, the receiver or qualified receiver for such covered financial shall either—

18 (A) disaffirm or repudiate all qualified financial contracts between—

19 (i) any person or any affiliate of such person; and

20 (ii) the covered financial company in default; or

21 (B) disaffirm or repudiate none of the qualified financial contracts referred
22 to in subparagraph (A) (with respect to such person or any affiliate of such
23 person).

1 (12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No
2 provision of this subsection shall be construed as permitting the avoidance of any—

3 (A) legally enforceable or perfected security interest in any of the assets of
4 any covered financial company except where such an interest is taken in
5 contemplation of the company’s insolvency or with the intent to hinder, delay, or
6 defraud the company or the creditors of such company; or

7 (B) legally enforceable interest in customer property.

8 (13) AUTHORITY TO ENFORCE CONTRACTS.—

9 (A) IN GENERAL.—The receiver or qualified receiver may enforce any
10 contract, other than a director’s or officer’s liability insurance contract or a
11 financial institution bond, entered into by the covered financial company
12 notwithstanding any provision of the contract providing for termination, default,
13 acceleration, or exercise of rights upon, or solely by reason of, insolvency or the
14 appointment of or the exercise of rights or powers by a receiver or qualified
15 receiver.

16 (B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may
17 be construed as impairing or affecting any right of the receiver or qualified
18 receiver to enforce or recover under a director’s or officer’s liability insurance
19 contract or financial institution bond under other applicable law.

20 (C) CONSENT REQUIREMENT.—

21 (i) IN GENERAL.—Except as otherwise provided by this section, no
22 person may exercise any right or power to terminate, accelerate, or declare
23 a default under any contract to which the covered financial company is a

1 party, or to obtain possession of or exercise control over any property of
2 the covered financial company or affect any contractual rights of the
3 covered financial company, without the consent of the receiver or
4 qualified receiver, as appropriate, of the covered financial company during
5 the 45-day period beginning on the date of the appointment of the
6 qualified receiver, or during the 90-day period beginning on the date of the
7 appointment of the receiver, as applicable.

8 (ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph
9 shall apply to a director or officer liability insurance contract or a financial
10 institution bond, to the rights of parties to certain qualified financial
11 contracts pursuant to paragraph (8), or to the rights of parties to netting
12 contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance
13 Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall
14 be construed as permitting the receiver or qualified receiver to fail to
15 comply with otherwise enforceable provisions of such contract.

16 (14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY
17 INTEREST.—No provision of this subsection shall apply with respect to—

18 (A) any extension of credit from any Federal Reserve bank or the
19 Corporation to any covered financial company; or

20 (B) any security interest in the assets of the covered financial company
21 securing any such extension of credit.

22 (15) SAVINGS CLAUSE. —The meanings of terms used in this subsection are
23 applicable for purposes of this subsection only, and shall not be construed or applied so

1 as to challenge or affect the characterization, definition, or treatment of any similar terms
2 under any other statute, regulation, or rule, including, but not limited, to the
3 Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the
4 securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act
5 of 1934), and the Commodity Exchange Act.

6 (d) VALUATION OF CLAIMS IN DEFAULT.—

7 (1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law
8 of any State, and regardless of the method which the Corporation determines to utilize
9 with respect to a covered financial company, including transactions authorized under
10 subsection (h), this subsection shall govern the rights of the creditors of such covered
11 financial company.

12 (2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as
13 receiver or in any other capacity, to any person having a claim against the receiver or the
14 covered financial company for which such receiver is appointed shall equal the amount
15 such claimant would have received if—

16 (A) a determination had not been made under section 1603(b) with respect
17 to the covered financial company; and

18 (B) the covered financial company had been liquidated under title 11,
19 United States Code, or any case related to title 11, United States Code (including
20 but not limited to a case initiated by the Securities Investor Protection Corporation
21 with respect to a financial company subject to the Securities Investor Protection
22 Act of 1970), or any State insolvency law.

23 (3) ADDITIONAL PAYMENTS AUTHORIZED.—

1 (A) IN GENERAL.—The Corporation may, as receiver and with the
2 approval of the Secretary, make additional payments or credit additional amounts
3 to or with respect to or for the account of any claimant or category of claimants of
4 a covered financial company if the Corporation determines that such payments or
5 credits are necessary or appropriate to—

6 (i) minimize losses to the receiver from the resolution of the
7 covered financial company under this section; or

8 (ii) prevent or mitigate serious adverse effects to financial stability
9 or the United States economy.

10 (B) MANNER OF PAYMENT.—The Corporation may make payments or
11 credit amounts under subparagraph (A) directly to the claimants or may make
12 such payments or credit such amounts to a company other than a covered
13 financial company or a bridge financial company established with respect thereto
14 in order to induce such other company to accept liability for such claims.

15 (e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request
16 of the receiver or qualified receiver appointed for a covered financial company, no court may
17 take any action to restrain or affect the exercise of powers or functions of the receiver or
18 qualified receiver hereunder.

19 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

20 (1) IN GENERAL.—A director or officer of a covered financial company may be
21 held personally liable for monetary damages in any civil action described in paragraph
22 (2) by, on behalf of, or at the request or direction of the Corporation, which action is
23 prosecuted wholly or partially for the benefit of the Corporation—

1 (A) acting as receiver or qualified receiver of such covered financial
2 company;

3 (B) acting based upon a suit, claim, or cause of action purchased from,
4 assigned by, or otherwise conveyed by such receiver or qualified receiver; or

5 (C) acting based upon a suit, claim, or cause of action purchased from,
6 assigned by, or otherwise conveyed in whole or in part by a covered financial
7 company or its affiliate in connection with assistance provided under section
8 1604.

9 (2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for
10 gross negligence, including any similar conduct or conduct that demonstrates a greater
11 disregard of a duty of care (than gross negligence) including intentional tortious conduct,
12 as such terms are defined and determined under applicable State law.

13 (3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right
14 of the Corporation under other applicable law.

15 (g) DAMAGES.—In any proceeding related to any claim against a covered financial
16 company's director, officer, employee, agent, attorney, accountant, appraiser, or any other party
17 employed by or providing services to a covered financial company, recoverable damages
18 determined to result from the improvident or otherwise improper use or investment of any
19 covered financial company's assets shall include principal losses and appropriate interest.

20 (h) BRIDGE FINANCIAL COMPANIES.—

21 (1) ORGANIZATION.—

22 (A) PURPOSE.—The Corporation, as receiver of one or more covered
23 financial companies may organize one or more bridge financial companies in

1 accordance with this subsection.

2 (B) AUTHORITIES.—Upon the creation of a bridge financial company
3 under subparagraph (A) with respect to a covered financial company, such bridge
4 financial company may—

5 (i) assume such liabilities (including liabilities associated with any
6 trust or custody business but excluding any liabilities that count as
7 regulatory capital) of such covered financial company as the Corporation
8 may, in its discretion, determine to be appropriate;

9 (ii) purchase such assets (including assets associated with any trust
10 or custody business) of such covered financial company as the
11 Corporation may, in its discretion, determine to be appropriate; and

12 (iii) perform any other temporary function which the Corporation
13 may, in its discretion, prescribe in accordance with this section.

14 (2) CHARTER AND ESTABLISHMENT.—

15 (A) ESTABLISHMENT.—If the Corporation is appointed as receiver for a
16 covered financial company, the Corporation may grant a Federal charter to and
17 approve articles of association for one or more bridge financial company or
18 companies with respect to such covered financial company which shall, by
19 operation of law and immediately upon issuance of its charter and approval of its
20 articles of association, be established and operate in accordance with, and subject
21 to, such charter, articles, and this section.

22 (B) MANAGEMENT.—Upon its establishment, a bridge financial company
23 shall be under the management of a board of directors appointed by the

1 Corporation.

2 (C) ARTICLES OF ASSOCIATION.—The articles of association and
3 organization certificate of a bridge financial shall have such terms as the
4 Corporation may provide, and shall be executed by such representatives as the
5 Corporation may designate.

6 (D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.— Subject to and in
7 accordance with the provisions of this subsection, the Corporation shall—

8 (i) establish the terms of the charter of a bridge financial company
9 and the rights, powers, authorities and privileges of a bridge financial
10 company granted by the charter or as an incident thereto; and

11 (ii) provide for, and establish the terms and conditions governing,
12 the management (including, but not limited to, the bylaws and the number
13 of directors of the board of directors) and operations of the bridge
14 financial company.

15 (E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL
16 COMPANY.—

17 (i) IN GENERAL.—Notwithstanding any other provision of Federal
18 law or the law of any State, the Corporation may provide for a bridge
19 financial company to succeed to and assume any rights, powers,
20 authorities or privileges of the covered financial company with respect to
21 which the bridge financial company was established and, upon such
22 determination by the Corporation, the bridge financial company shall
23 immediately and by operation of law succeed to and assume such rights,

1 powers, authorities and privileges.

2 (ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or
3 assumption by a bridge financial company of rights, powers, authorities or
4 privileges of a covered financial company under clause (i) or otherwise
5 shall be effective without any further approval under Federal or State law,
6 assignment, or consent with respect thereto.

7 (F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY
8 OF LAW.—To the extent permitted by the Corporation and consistent with this
9 section and any rules, regulations or directives issued by the Corporation under
10 this section, a bridge financial company may elect to follow the corporate
11 governance practices and procedures as are applicable to a corporation
12 incorporated under the general corporation law of the State of Delaware, or the
13 State of incorporation or organization of the covered financial company with
14 respect to which the bridge financial company was established, as such law may
15 be amended from time to time.

16 (G) CAPITAL.—

17 (i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision
18 of Federal or State law, a bridge financial company may, if permitted by
19 the Corporation, operate without any capital or surplus, or with such
20 capital or surplus as the Corporation may in its discretion determine to be
21 appropriate.

22 (ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The
23 Corporation is not required to pay capital into a bridge financial company

1 or to issue any capital stock on behalf of a bridge financial company
2 established under this subsection.

3 (iii) AUTHORITY.—If the Corporation determines that such action
4 is advisable, the Corporation may cause capital stock or other securities of
5 a bridge financial company established with respect to a covered financial
6 company to be issued and offered for sale in such amounts and on such
7 terms and conditions as the Corporation may, in its discretion, determine.

8 (3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL
9 COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

10 (A) a bridge financial company shall assume, acquire, or succeed to the
11 assets or liabilities of a covered financial company (including the assets or
12 liabilities associated with any trust or custody business) only to the extent that
13 such assets or liabilities are transferred by the Corporation to the bridge financial
14 company in accordance with, and subject to the restrictions set forth in, paragraph
15 (1)(B); and

16 (B) a bridge financial company shall not assume, acquire, or succeed to
17 any obligation that a covered financial company for which a receiver has been
18 appointed may have to any shareholder, member, general partner, limited partner,
19 or other person with an interest in the equity of the covered financial company
20 that arises as a result of the status of that person having an equity claim in the
21 covered financial company.

22 (4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN
23 PURPOSES.—A bridge financial company shall be treated as a covered financial company

1 in default at such times and for such purposes as the Corporation may, in its discretion,
2 determine.

3 (5) TRANSFER OF ASSETS AND LIABILITIES.—

4 (A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver,
5 may transfer any assets and liabilities of a covered financial company (including
6 any assets or liabilities associated with any trust or custody business) to one or
7 more bridge financial companies in accordance with and subject to the restrictions
8 of paragraph (1)(B).

9 (B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a
10 bridge financial company with respect to a covered financial company, the
11 Corporation, as receiver, may transfer any assets and liabilities of such covered
12 financial company as the Corporation may, in its discretion, determine to be
13 appropriate in accordance with and subject to the restrictions of paragraph (1)(B).

14 (C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this
15 paragraph, the trust or custody business, including fiduciary appointments, held
16 by any covered financial company is included among its assets and liabilities.

17 (D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or
18 liabilities, including those associated with any trust or custody business of a
19 covered financial company to a bridge financial company shall be effective
20 without any further approval under Federal or State law, assignment, or consent
21 with respect thereto.

22 (E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The
23 Corporation shall treat all creditors of a covered financial company that are

1 similarly situated under subsection (b)(1) in a similar manner in exercising the
2 authority of the Corporation under this subsection to transfer any assets or
3 liabilities of the covered financial company to one or more bridge financial
4 companies established with respect to such covered financial company, except
5 that the Corporation may take actions (including making payments) that do not
6 comply with this subparagraph, if—

7 (i) the Corporation determines that such actions are necessary to
8 maximize the value of the assets of the covered financial company, to
9 maximize the present value return from the sale or other disposition of the
10 assets of the covered financial company, to minimize the amount of any
11 loss realized upon the sale or other disposition of the assets of the covered
12 financial company, or to contain or address serious adverse effects to
13 financial stability or the U.S. economy; and

14 (ii) all creditors that are similarly situated under subsection (b)(1)
15 receive not less than the amount provided in subsection (d)(2).

16 (F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other
17 provision of law, the aggregate amount of liabilities of a covered financial
18 company that are transferred to, or assumed by, a bridge financial company from
19 a covered financial company may not exceed the aggregate amount of the assets
20 of the covered financial company that are transferred to, or purchased by, the
21 bridge financial company from the covered financial company.

22 (6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial
23 company becomes a party by virtue of its acquisition of any assets or assumption of any

1 liabilities of a covered financial company shall be stayed from further proceedings for a
2 period of up to 45 days (or such longer period as may be agreed to upon the consent of all
3 parties) at the request of the bridge financial company.

4 (7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No
5 agreement that tends to diminish or defeat the interest of the bridge financial company in
6 any asset of a covered financial company acquired by the bridge financial company shall
7 be valid against the bridge financial company unless such agreement is in writing and
8 executed by an authorized officer or representative of the covered financial company.

9 (8) NO FEDERAL STATUS.—

10 (A) AGENCY STATUS.—A bridge financial company is not an agency,
11 establishment, or instrumentality of the United States.

12 (B) EMPLOYEE STATUS.—Representatives for purposes of paragraph
13 (1)(B), directors, officers, employees, or agents of a bridge financial company are
14 not, solely by virtue of service in any such capacity, officers or employees of the
15 United States. Any employee of the Corporation or of any Federal
16 instrumentality who serves at the request of the Corporation as a representative
17 for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge
18 financial company shall not—

19 (i) solely by virtue of service in any such capacity lose any existing
20 status as an officer or employee of the United States for purposes of title 5,
21 United States Code, or any other provision of law; or

22 (ii) receive any salary or benefits for service in any such capacity
23 with respect to a bridge financial company in addition to such salary or

1 benefits as are obtained through employment with the Corporation or such
2 Federal instrumentality.

3 (9) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or
4 State law, a bridge financial company, its franchise, property, and income shall be
5 exempt from all taxation now or hereafter imposed by the United States, by any territory,
6 dependency, or possession thereof, or by any State, county, municipality, or local taxing
7 authority.

8 (10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

9 (A) IN GENERAL.—If a transaction involving the merger or sale of a bridge
10 financial company requires approval by a Federal agency, the transaction may not
11 be consummated before the 5th calendar day after the date of approval by the
12 Federal agency responsible for such approval with respect thereto. If, in
13 connection with any such approval a report on competitive factors from the
14 Attorney General is required, the Federal agency responsible for such approval
15 shall promptly notify the Attorney General of the proposed transaction and the
16 Attorney General shall provide the required report within 10 days of the request.
17 If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of
18 1976 with the Department of Justice or the Federal Trade Commission, the
19 waiting period shall expire not later than the 30th day following such filing
20 notwithstanding any other provision of Federal law or any attempt by any Federal
21 agency to extend such waiting period, and no further request for information by
22 any Federal agency shall be permitted.

23 (B) EMERGENCY.—If the Secretary, in consultation with the Chairman of

1 the Federal Reserve Board, has found that the Corporation must act immediately
2 to prevent the probable failure of the covered financial company involved, the
3 approvals and filings referred to in subparagraph (A) shall not be required and the
4 transaction may be consummated immediately by the Corporation.

5 (11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (12),
6 (13) and (14), the status of a bridge financial company as such shall terminate at the end
7 of the 2-year period following the date it was granted a charter. The Corporation may, in
8 its discretion, extend the status of the bridge financial company as such for 3 additional 1-
9 year periods.

10 (12) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any
11 bridge financial company as such shall terminate upon the earliest of—

12 (A) the merger or consolidation of the bridge financial company with a
13 company that is not a bridge financial company;

14 (B) at the election of the Corporation, the sale of a majority of the capital
15 stock of the bridge financial company to a company other than the Corporation
16 and other than another bridge financial company;

17 (C) the sale of 80 percent, or more, of the capital stock of the bridge
18 financial company to a person other than the Corporation and other than another
19 bridge financial company;

20 (D) at the election of the Corporation, either the assumption of all or
21 substantially all of the liabilities of the bridge financial company by a company
22 that is not a bridge financial company, or the acquisition of all or substantially all
23 of the assets of the bridge financial company by a company that is not a bridge

1 financial company, or other entity as permitted under applicable law; and

2 (E) the expiration of the period provided in paragraph (11), or the earlier
3 dissolution of the bridge financial company as provided in paragraph (14).

4 (13) EFFECT OF TERMINATION EVENTS.—

5 (A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided
6 in paragraph (12)(A) shall be conducted in accordance with, and shall have the
7 effect provided in, the provisions of applicable law. For the purpose of effecting
8 such a merger or consolidation, the bridge financial company shall be treated as a
9 corporation organized under the laws of the State of Delaware (unless the law of
10 another State has been selected by the bridge financial company in accordance
11 with paragraph (2)(F)), and the Corporation shall be treated as the sole
12 shareholder thereof, notwithstanding any other provision of State or Federal law.

13 (B) CHARTER CONVERSION.—Following the sale of a majority of the
14 capital stock of the bridge financial company as provided in paragraph (12)(B),
15 the Corporation may amend the charter of the bridge financial company to reflect
16 the termination of the status of the bridge financial company as such, whereupon
17 the company shall have all of the rights, powers, and privileges under its
18 constituent documents and applicable State or Federal law. In connection
19 therewith, the Corporation may take such steps as may be necessary or convenient
20 to reincorporate the bridge financial company under the laws of a State and,
21 notwithstanding any provisions of State or Federal law, such state-chartered
22 corporation shall be deemed to succeed by operation of law to such rights, titles,
23 powers and interests of the bridge financial company as the Corporation may

1 provide, with the same effect as if the bridge financial company had merged with
2 the State-chartered corporation under provisions of the corporate laws of such
3 State.

4 (C) SALE OF STOCK.—Following the sale of 80 percent or more of the
5 capital stock of a bridge financial company as provided in paragraph (12)(C), the
6 company shall have all of the rights, powers, and privileges under its constituent
7 documents and applicable State or Federal law. In connection therewith, the
8 Corporation may take such steps as may be necessary or convenient to
9 reincorporate the bridge financial company under the laws of a State and,
10 notwithstanding any provisions of State or Federal law, the state-chartered
11 corporation shall be deemed to succeed by operation of law to such rights, titles,
12 powers and interests of the bridge financial company as the Corporation may
13 provide, with the same effect as if the bridge financial company had merged with
14 the State-chartered corporation under provisions of the corporate laws of such
15 State.

16 (D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the
17 assumption of all or substantially all of the liabilities of the bridge financial
18 company, or the sale of all or substantially all of the assets of the bridge financial
19 company, as provided in paragraph (12)(D), at the election of the Corporation the
20 bridge financial company may retain its status as such for the period provided in
21 paragraph (11) or may be dissolved at the election of the Corporation.

22 (E) AMENDMENTS TO CHARTER.—Following the consummation of a
23 transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the

1 charter of the resulting company shall be amended to reflect the termination of
2 bridge financial company status, if appropriate.

3 (14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

4 (A) IN GENERAL.—Notwithstanding any other provision of State or
5 Federal law, if a bridge financial company’s status as such has not previously
6 been terminated by the occurrence of an event specified in subparagraph (A), (B),
7 (C), or (D) of paragraph (12)—

8 (i) the Corporation may, in its discretion, dissolve the bridge
9 financial company in accordance with this paragraph at any time; and

10 (ii) the Corporation shall promptly commence dissolution
11 proceedings in accordance with this paragraph upon the expiration of the
12 2-year period following the date the bridge financial company was
13 chartered, or any extension thereof, as provided in paragraph (11).

14 (B) PROCEDURES.—The Corporation shall remain the receiver of a bridge
15 financial company for the purpose of dissolving the bridge financial company.
16 The Corporation as such receiver shall wind up the affairs of the bridge financial
17 company in conformity with the provisions of law relating to the liquidation of
18 covered financial companies. With respect to any such bridge financial company,
19 the Corporation as receiver shall have all the rights, powers, and privileges and
20 shall perform the duties related to the exercise of such rights, powers, or
21 privileges granted by law to a receiver of a covered financial company and,
22 notwithstanding any other provision of law, in the exercise of such rights, powers,
23 and privileges the Corporation shall not be subject to the direction or supervision

1 of any State agency or other Federal agency.

2 (15) AUTHORITY TO OBTAIN CREDIT.—

3 (A) IN GENERAL.—A bridge financial company may obtain unsecured
4 credit and issue unsecured debt.

5 (B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is
6 unable to obtain unsecured credit or issue unsecured debt, the Corporation may
7 authorize the obtaining of credit or the issuance of debt by the bridge financial
8 company—

9 (i) with priority over any or all of the obligations of the bridge
10 financial company;

11 (ii) secured by a lien on property of the bridge financial company
12 that is not otherwise subject to a lien; or

13 (iii) secured by a junior lien on property of the bridge financial
14 company that is subject to a lien.

15 (C) LIMITATIONS.—

16 (i) IN GENERAL.—The Corporation, after notice and a hearing, may
17 authorize the obtaining of credit or the issuance of debt by a bridge
18 financial company that is secured by a senior or equal lien on property of
19 the bridge financial company that is subject to a lien only if—

20 (I) the bridge financial company is unable to otherwise
21 obtain such credit or issue such debt; and

22 (II) there is adequate protection of the interest of the holder
23 of the lien on the property with respect to which such senior or

1 equal lien is proposed to be granted.

2 (D) BURDEN OF PROOF.—In any hearing under this subsection, the

3 Corporation has the burden of proof on the issue of adequate protection.

4 (16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an
5 authorization under this subsection to obtain credit or issue debt, or of a grant under this
6 section of a priority or a lien, does not affect the validity of any debt so issued, or any
7 priority or lien so granted, to an entity that extended such credit in good faith, whether or
8 not such entity knew of the pendency of the appeal, unless such authorization and the
9 issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

10 (i) SHARING RECORDS.—Whenever the Corporation has been appointed as receiver or
11 qualified receiver for a covered financial company, the Federal Reserve Board and the
12 company's primary federal regulatory agency, if any, shall each make all records relating to the
13 company available to the receiver or qualified receiver which may be used by the receiver or
14 qualified receiver in any manner the receiver or qualified receiver determines to be appropriate.

15 (j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

16 (1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order,
17 whether interlocutory or final, entered in any case brought by the Corporation against a
18 covered financial company's director, officer, employee, agent, attorney, accountant, or
19 appraiser or any other person employed by or providing services to a covered financial
20 company shall be filed not later than 30 days after the date of entry of the order. The
21 hearing of the appeal shall be held not later than 120 days after the date of the notice of
22 appeal. The appeal shall be decided not later than 180 days after the date of the notice of
23 appeal.

1 (2) SCHEDULING.—A court of the United States shall expedite the consideration of
2 any case brought by the Corporation against a covered financial company’s director,
3 officer, employee, agent, attorney, accountant, or appraiser or any other person employed
4 by or providing services to a covered financial company. As far as practicable, the court
5 shall give such case priority on its docket.

6 (3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations
7 stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the
8 ends of justice that would be served by making such a modification would outweigh the
9 best interest of the public in having the case resolved expeditiously.

10 (k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver or qualified receiver of any
11 covered financial company and for purposes of carrying out any power, authority, or duty with
12 respect to a covered financial company—

13 (1) may request the assistance of any foreign financial authority and provide
14 assistance to any foreign financial authority in accordance with section 8(v) of the
15 Federal Deposit Insurance Act as if the covered financial company were an insured
16 depository institution, the Corporation were the appropriate Federal banking agency for
17 the company and any foreign financial authority were the foreign banking authority; and

18 (2) may maintain an office to coordinate foreign investigations or investigations
19 on behalf of foreign financial authorities.

20 (l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The
21 Corporation may not enter into any agreement or approve any protective order which prohibits
22 the Corporation from disclosing the terms of any settlement of an administrative or other action
23 for damages or restitution brought by the Corporation in its capacity as receiver or qualified

1 receiver for a covered financial company.

2 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL
3 COMPANIES.—Notwithstanding any other provision of law (other than a conflicting provision of
4 this section), the Corporation, in connection with the liquidation of any covered financial
5 company or bridge financial company with respect to which the Corporation has been appointed
6 as receiver, shall—

7 (1) in the case of any covered financial company or bridge financial company that
8 is or has a subsidiary that is a stockbroker (as that term is defined in section 101 of title
9 11 of the United States Code) but is not a member of the Securities Investor Protection
10 Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of the United
11 States Code in respect of the distribution to any “customer” of all “customer name
12 securities” and “customer property” (as such terms are defined in section 741 of such title
13 11) as if such covered financial company or bridge financial company were a debtor for
14 purposes of such subchapter; or

15 (2) in the case of any covered financial company or bridge financial company that
16 is a commodity broker (as that term is defined in section 101 of title 11 of the United
17 States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of the United
18 States Code in respect of the distribution to any “customer” of all “customer property” (as
19 such terms are defined in section 761 of such title 11) as if such covered financial
20 company or bridge financial company were a debtor for purposes of such subchapter.

21 (n) SYSTEMIC RESOLUTION FUND.—

22 (1) ESTABLISHMENT.—There is established in the Treasury a separate fund called
23 the Systemic Resolution Fund, which shall be available without further appropriation for

1 the cost of actions authorized by this title upon a determination made under section
2 1603(b) to the Corporation to carry out the authorities contained in this title, including the
3 payment of administrative expenses, the Corporation's payment of principal and interest
4 on obligations issued under paragraph (3), and the exercise of authorities under section
5 1604.

6 (2) PROCEEDS.—Amounts received by the Corporation (including amounts
7 borrowed under paragraph (3) and assessments received under subsection (o), but
8 excluding amounts received by any covered financial company when the Corporation is
9 acting in its capacity as receiver or qualified receiver for such company, and excluding
10 amounts credited to the appropriate financing account as a means of financing credit
11 activity, as applicable) shall be deposited into the Fund, subject to apportionment.

12 (3) CAPITALIZATION OF FUND.—

13 (A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—In order to
14 capitalize the Fund upon the Secretary making the determination provided for in
15 section 1603(b), the Corporation is authorized to issue obligations to the
16 Secretary.

17 (B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary
18 may, in the Secretary's discretion and under such terms and conditions that the
19 Secretary may require, purchase or agree to purchase any obligations issued under
20 subparagraph (A), and for such purpose the Secretary is authorized to use as a
21 public debt transaction the proceeds of the sale of any securities hereafter issued
22 under chapter 31 of title 31, United States Code, and the purposes for which
23 securities may be issued under chapter 31 of title 31, United States Code, are

1 extended to include such purchases.

2 (C) INTEREST RATE.—Each purchase of obligations by the Secretary under
3 this paragraph shall be upon such terms and conditions as to yield a return at a
4 rate not less than a rate determined by the Secretary, taking into consideration the
5 current average yield on outstanding marketable obligations of the United States
6 of comparable maturity.

7 (D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may
8 sell, upon such terms and conditions and at such price or prices as the Secretary
9 shall determine, any of the obligations acquired under this paragraph.

10 (E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the
11 Secretary of such obligations under this paragraph shall be treated as public debt
12 transactions of the United States, and the proceeds from the sale of any
13 obligations acquired by the Secretary under this paragraph shall be covered into
14 the Treasury as miscellaneous receipts.

15 (o) RECOVERY OF EXPENDED FUNDS FROM FINANCIAL COMPANIES.—

16 (1) RISK-BASED ASSESSMENTS.—The Corporation shall recover the amount of
17 funds expended out of the Fund under subsection (n) and which have not otherwise been
18 recouped. Steps to recover such amounts shall include one or more risk-based
19 assessments on financial companies in such amount and manner, and subject to such
20 terms and conditions that the Corporation determines, with the concurrence of the
21 Secretary and the Federal Reserve Board, are necessary to pay in full the obligations
22 issued by Corporation to the Secretary, within 60 months from the date of the Secretary's
23 determination under section 1603(b). The Corporation may, with the approval of the

1 Secretary and the Federal Reserve Board, extend this time period if the Corporation
2 determines that an extension is necessary to avoid having a serious adverse effect on the
3 financial system or economic conditions in the United States.

4 (2) ASSESSMENT THRESHOLD AND GRADUATED ASSESSMENT RATE.— The
5 Corporation shall not assess any financial company whose total assets on a consolidated
6 basis are less than \$10 billion. The Corporation shall assess any financial company with
7 \$10 billion or more in total consolidated assets on a graduated basis that assesses
8 financial companies with greater assets at a higher rate.

9 (3) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under
10 paragraphs (1) and (2), the Corporation shall—

11 (A) take into account economic conditions generally affecting financial
12 companies so as to allow assessments to be lower during less favorable economic
13 conditions;

14 (B) take into account any assessments imposed on a subsidiary of a
15 financial company that is—

16 (i) an insured depository institution pursuant to section 7 or section
17 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. §§ 1817 and
18 1823(c)(4)(G));

19 (ii) a member of the Securities Investor Protection Corporation
20 pursuant to section 4 of the Securities Investor Protection Act of 1970 (15
21 U.S.C. § 78ddd); or

22 (iii) an insurance company pursuant to applicable State law to
23 cover (or reimburse payments made to cover) the costs of rehabilitation,

1 liquidation, or other State insolvency proceeding with respect to one or
2 more insurance companies.

3 (C) take into account the risks presented by the financial company to
4 financial stability or the U.S. economy and the extent to which the financial
5 company has, benefited, or likely would benefit, from the resolution of a financial
6 company under this Act;

7 (D) take into account such other factors as the Corporation deems
8 appropriate;

9 (E) distinguish among different classes of assets or different types of
10 financial companies in order to establish comparable assessment bases among
11 financial companies subject to this subsection; and

12 (F) establish the parameters for the graduated assessment regime
13 described in paragraph (2).

14 (4) COLLECTION OF INFORMATION.—The Corporation may impose on financial
15 companies such collection of information requirements that the Corporation deems
16 necessary to carry out this subsection after a determination under section 1603(b).

17 (5) RULEMAKING—The Corporation shall, in consultation with the Secretary and
18 the Federal Reserve Board, prescribe regulations to carry out this subsection.

19 (p) NO FEDERAL STATUS.—

20 (1) AGENCY STATUS.—A covered financial company (or any covered subsidiary
21 thereof) that is placed into receivership or qualified receivership is not a department,
22 agency, or instrumentality of the United States for purposes of statutes that confer powers
23 on or impose obligations on government entities.

1 (2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or
2 agents of a covered financial company that is placed into receivership or qualified
3 receivership are not, solely by virtue of service in any such capacity, officers or
4 employees of the United States. Any employee of the Corporation, acting as receiver or
5 qualified receiver, or of any Federal agency who serves at the request of the receiver or
6 qualified receiver as an interim director, director, officer, employee, or agent of a covered
7 financial company that is placed into receivership or qualified receivership shall not—

8 (A) solely by virtue of service in any such capacity lose any existing status
9 as an officer or employee of the United States for purposes of title 5, United
10 States Code, or any other provision of law, or;

11 (B) receive any salary or benefits for service in any such capacity with
12 respect to a covered financial company that is placed into receivership or qualified
13 receivership in addition to such salary or benefits as are obtained through
14 employment with the Corporation or other Federal agency.

15 **SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF**
16 **ASSETS FROM QUALIFIED RECEIVER, RECEIVER, OR LIQUIDATING AGENT.**

17 (a) IN GENERAL.— Section 1032 of title 18, United States Code, is amended in paragraph
18 (1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting
19 immediately thereafter “or the Corporation, as defined in section 1602 of the Resolution
20 Authority for Large, Interconnected Financial Companies Act of 2009 (___U.S.C. §
21 ___(1)(A)),”.

22 (b) CONFORMING CHANGE.—The title of section 1032 of title 18, United States Code, is
23 amended by deleting “of financial institution”.

1 **SEC. 1611. MISCELLANEOUS PROVISIONS.**

2 (a) BANKRUPTCY CODE AMENDMENTS.—Section 109(b)(2) of title 11 of the United States
3 Code is amended by adding “covered financial company” as that term is defined in section
4 1602(5) of the Resolution Authority for Large, Interconnected Financial Companies Act of
5 2009,” after a “domestic insurance company”.

6 (b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT.—

7 (1) Section 141 of the Federal Deposit Insurance Corporation Improvement Act of 1991
8 (12 U.S.C. 1823(c)(4)(G)(i) is amended by inserting at the end thereof the following new
9 sentence:

10 “The determination with regard to the Corporation’s exercise of authority under this
11 subparagraph shall apply to only an insured depository institution except where severe financial
12 conditions exist which threaten the stability of a significant number of insured depository
13 institutions.

14 (2) Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of
15 1991 (12 U.S.C. 4403(a)) is amended by inserting “section 1609(c) of the Resolution Authority
16 for Large, Interconnected Financial Companies Act of 2009, section 1367 of the Federal Housing
17 Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)), “after “section
18 1821(e) of this title.

19 **SUBTITLE H – ADDITIONAL IMPROVEMENTS FOR**
20 **FINANCIAL CRISIS MANAGEMENT**

21

22 **SECTION 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL CRISIS**

23 **MANAGEMENT.**

1 Section 13 of the Federal Reserve Act is amended in the 3rd undesignated paragraph (12
2 U.S.C. 343) to read as follows:

3 In unusual and exigent circumstances, the Board of Governors of the Federal Reserve
4 System, by the affirmative vote of not less than five members and with the written concurrence
5 of the Secretary of the Treasury, may authorize any Federal reserve bank, during such periods as
6 the said board may determine, at rates established in accordance with the provisions of section
7 14, subdivision (d) of this Act (12 U.S.C. 357), to discount for an individual, partnership, or
8 corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange
9 are indorsed or otherwise secured to the satisfaction of the Federal reserve bank: *Provided* that
10 the Board of Governors of the Federal Reserve System may authorize a Federal reserve bank to
11 discount notes, drafts, or bills of exchange under this section only as part of a broadly available
12 credit or other facility and may not authorize a Federal Reserve bank to discount notes, drafts, or
13 bills of exchange for only a single and specific individual, partnership, or corporation: *And*
14 *provided further* that before discounting any such note, draft, or bill of exchange for an
15 individual, a partnership or corporation the Federal reserve bank shall obtain evidence that such
16 individual, partnership, or corporation is unable to secure adequate credit accommodations from
17 other banking institutions. All discounts under this paragraph for individuals, partnerships, or
18 corporations shall be subject to such limitations, restrictions, and regulations as the Board of
19 Governors of the Federal Reserve System may prescribe.