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[Report No. 111–_____]

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

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A BILL

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Restoring American Financial Stability Act of 2010''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) AFFILIATE.—The term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—On and after the transfer date, the term ''appropriate Federal banking agency'' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q), as amended by title III.

(3) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(4) BUREAU.—The term ''Bureau'' means the Bureau of Consumer Financial Protection established under title X.

(5) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(7) COUNCIL.—The term ''Council'' means the Financial Stability Oversight Council established under title I.

(8) CREDIT UNION.—The term ''credit union'' means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(9) FEDERAL BANKING AGENCY.—The term—

(A) ''Federal banking agency'' means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) ''Federal banking agencies'' means all of the agencies referred to in subparagraph (A), collectively.

(10) FUNCTIONALLY REGULATED SUBSIDIARY.—The term ''functionally regulated subsidiary'' has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(11) PRIMARY FINANCIAL REGULATORY AGENCY.—The term ''primary financial regulatory agency'' means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act;

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any financial planner that is registered with the Commission under the Financial Planners Act of 2010; and

(v) any clearing agency registered with the Commission under the Securities Exchange Act of 1934;

(C) the Commodity Futures Trading Commission, with respect to any futures commission merchant, any commodity trading adviser, and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, with respect to the commodities activities of such entity and activities that are incidental to such commodities activities; and

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law.

(12) PRUDENTIAL STANDARDS.—The term ''prudential standards'' means enhanced supervision and regulatory standards developed by the Board of Governors under section 115 or 165.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(14) SECURITIES TERMS.—The—

(A) terms ''broker'', ''dealer'', ''issuer'', ''nationally recognized statistical ratings organi-

zation'', ''security'', and ''securities laws'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term ''investment adviser'' has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(C) term ''investment company'' has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(15) STATE.—The term ''State'' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(16) TRANSFER DATE.—The term ''transfer date'' means the date established under section 311.

(17) OTHER INCORPORATED DEFINITIONS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—The terms ''affiliate'', ''bank'', ''bank holding company'', ''control'' (when used with respect to a depository institution), ''deposit'', ''depository institution'', ''Federal depository institution'', ''Federal savings association'', ''foreign bank'',

"including", "insured branch", "insured depository institution", "national member bank", "national nonmember bank", "savings association", "State bank", "State depository institution", "State member bank", "State nonmember bank", "State savings association", and "subsidiary" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) HOLDING COMPANIES.—The term—

(i) "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(ii) "financial holding company" has the same meaning as in section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)); and

(iii) "savings and loan holding company" has the same meaning as in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amend-

ment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or the amendments made by this Act, this Act and such amendments shall take effect on the date of enactment of this Act.

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Stability Act of 2010''.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Bank-

ing Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) MEMBER AGENCY.—The term ''member agency'' means an agency represented by a member of the Council.

(3) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States, as a bank holding company or a subsidiary thereof) that is—

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

(ii) substantially engaged in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term ''U.S. nonbank financial company'' means a company (other than a bank

holding company or a subsidiary thereof) that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(4) OFFICE OF FINANCIAL RESEARCH.—The term ''Office of Financial Research'' means the office established under section 152.

(5) SIGNIFICANT INSTITUTIONS.—The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors.

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the criteria to determine whether a company is substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act

of 1956) for purposes of the definitions of the terms ''U.S. nonbank financial company'' and ''foreign nonbank financial company'' under subsection (a)(4).

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the authority of the Board of Governors under this title with respect to foreign nonbank financial companies, references in this title to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

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

(1) VOTING MEMBERS.—The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as chairperson of the Council;

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

(H) the Director of the Federal Housing Finance Agency; and

(I) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The Director of the Office of Financial Research—

(A) shall serve in an advisory capacity as a nonvoting member of the Council; and

(B) may not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

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

member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the members then serving.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Independent Member of the Financial Stability Oversight Council (1).".

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies;

(B) to promote market discipline, by eliminating expectations on the part of shareholders,

creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial markets.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies and other Federal and State financial regulatory agencies and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development,

rulemaking, examinations, reporting requirements, and enforcement actions;

(E) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(F) identify gaps in regulation that could pose risks to the financial stability of the United States;

(G) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, pursuant to section 113;

(H) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(I) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII), and require such utilities and activities to be subject to standards established by the Board of Governors;

(J) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(K) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(L) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market developments and potential emerging threats to the financial stability of the United States;

(iii) all determinations made under section 113 or title VIII, and the basis for such determinations; and

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research and member agencies, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

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

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, the Office of Financial Research and any member agency are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on informa-

tion available from the Office of Financial Research or such agencies.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraph (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subsection and subtitle B.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise af-

fect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and type of the off-balance-sheet exposures of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

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

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

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

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by

which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later

than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection

(d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under sub-

sections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council

shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS TO CONGRESS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding com-

panies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the

Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

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

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to

submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate

or the Committee on Financial Services of the House of Representatives hold one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

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

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

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

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

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

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and

nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—

(A) IN GENERAL.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

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

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the

Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this title should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, shall require the subject company—

(1) to terminate one or more activities;

(2) to impose conditions on the manner in which the company conducts one or more activities; or

(3) if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States in its recommendation, sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the

Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and in a decision described in subsection (b).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

Subtitle B—Office of Financial Research

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

(1) the terms ''Office'' and ''Director'' mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;

(2) the term ''financial company'' has the same meaning as in title II, and includes an insured depository institution and an insurance company;

(3) the term ''Data Center'' means the data center established under section 154; and

(4) the term ''Research and Analysis Center'' means the research and analysis center established under section 154.

SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Financial Research.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) TERM OF SERVICE.—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) EXECUTIVE LEVEL.—The Director shall be compensated at level III of the Executive Schedule.

(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

(5) RESPONSIBILITIES, DUTIES AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercise the authorities described in this subtitle.

(c) BUDGET.—The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

(d) OFFICE PERSONNEL.—

(1) IN GENERAL.—The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) COMPENSATION.—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and En-

forcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(A) by striking ''Finance Board,,'' and inserting ''Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection''; and

(B) by striking ''and the Office of Thrift Supervision,''.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) CONTRACTING AND LEASING AUTHORITY.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Director may—

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

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

(h) NON-COMPETE.—The Director and any staff of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office, may not, for a period of 1 year after last having access to such transaction or position data or business confidential information, be employed by or provide advice or consulting services to a financial company, regardless of whether that entity is required to report to the Office. For staff whose access to business confidential information was limited, the Director may provide, on a case-by-case basis, for a shorter period of post-

employment prohibition, provided that the shorter period does not compromise business confidential information.

(i) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

(j) FELLOWSHIP PROGRAM.—The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

(k) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Director of the Office of Financial Research.".

SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

(a) PURPOSE AND DUTIES.—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

(2) standardizing the types and formats of data reported and collected;

(3) performing applied research and essential long-term research;

(4) developing tools for risk measurement and monitoring;

(5) performing other related services; and

(6) making the results of the activities of the Office available to financial regulatory agencies.

(b) ADMINISTRATIVE AUTHORITY.—The Office may—

(1) share data and information, including software developed by the Office, with the Council and member agencies, which shared data, information, and software—

(A) shall be maintained with at least the same level of security as is used by the Office; and

(B) may not be shared with any individual or entity without the permission of the Council;

(2) sponsor and conduct research projects; and

(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

(c) RULEMAKING AUTHORITY.—

(1) SCOPE.—The Office, in consultation with the Chairperson, shall issue rules, regulations, and orders only to the extent necessary to carry out the purposes and duties described in paragraphs (1) and (2) of subsection (a).

(2) STANDARDIZATION.—Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency.

(d) TESTIMONY.—

(1) IN GENERAL.—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate

and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(2) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other Congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(e) ADDITIONAL REPORTS.—The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

(f) SUBPOENA.—

(1) IN GENERAL.—The Director may require, by subpoena, the production of the data requested

under subsection (a)(1) and section 154(b)(1), but only upon a written finding by the Director that—

(A) such data is required to carry out the functions described under this subtitle; and

(B) that the Office has coordinated with such agency, as required under section 154(b)(1)(B)(ii).

(2) FORMAT.—Subpoenas under paragraph (1) shall bear the signature of the Director, and shall be served by any person or class of persons designated by the Director for that purpose.

(3) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF PRIMARY PROGRAMMATIC UNITS.

(a) IN GENERAL.—There are established within the Office, to carry out the programmatic responsibilities of the Office—

(1) the Data Center; and

(2) the Research and Analysis Center.

(b) DATA CENTER.—

(1) GENERAL DUTIES.—

(A) DATA COLLECTION.—The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this subtitle. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

(B) AUTHORITY.—

(i) IN GENERAL.—The Office may, on behalf of the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.

(ii) MITIGATION OF REPORT BURDEN.—Before requiring the submission of a report from any financial company that is regulated by a member agency or any primary financial regulatory agency, the Office shall coordinate with such agencies

and shall, whenever possible, rely on information available from such agencies.

(C) RULEMAKING.—The Office shall promulgate regulations pursuant to sections 153(a)(1) and 153(c)(1) regarding the type and scope of the data to be collected by the Data Center under this paragraph.

(2) RESPONSIBILITIES.—

(A) PUBLICATION.—The Data Center shall prepare and publish, in a manner that is easily accessible to the public—

(i) a financial company reference database;

(ii) a financial instrument reference database; and

(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

(B) CONFIDENTIALITY.—The Data Center shall not publish any confidential data under subparagraph (A).

(3) INFORMATION SECURITY.—The Director shall ensure that data collected and maintained by

the Data Center are kept secure and protected against unauthorized disclosure.

(4) CATALOGUE OF FINANCIAL ENTITIES AND INSTRUMENTS.—The Data Center shall maintain a catalogue of the financial entities and instruments reported to the Office.

(5) AVAILABILITY TO THE COUNCIL AND MEMBER AGENCIES.—The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

(6) OTHER AUTHORITY.—The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

(c) RESEARCH AND ANALYSIS CENTER.—

(1) GENERAL DUTIES.—The Research and Analysis Center, on behalf of the Council, shall de-

velop and maintain independent analytical capabilities and computing resources—

(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

(B) to monitor, investigate, and report on changes in system-wide risk levels and patterns to the Council and Congress;

(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

(D) to evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies;

(E) to maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators;

(F) to investigate disruptions and failures in the financial markets, report findings, and make recommendations to the Council based on those findings;

(G) to conduct studies and provide advice on the impact of policies related to systemic risk; and

(H) to promote best practices for financial risk management.

(d) REPORTING RESPONSIBILITIES.—

(1) REQUIRED REPORTS.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) CONTENT.—Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

SEC. 155. FUNDING.

(a) FINANCIAL RESEARCH FUND.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the ''Financial Research Fund''.

(2) FUND RECEIPTS.—All amounts provided to the Office under subsection (c), and all assessments

that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) INVESTMENTS AUTHORIZED.—

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

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

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

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office,

and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated monies.

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

(c) INTERIM FUNDING.—During the 2-year period following the date of enactment of this Act, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

(d) PERMANENT SELF-FUNDING.—

(1) IN GENERAL.—Beginning 2 years after the date of enactment of this Act, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of

$50,000,000,000 or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 115, to collect assessments equal to the estimated total expenses of the Office.

(2) SHORTFALL.—To the extent that the assessments under paragraph (1) do not fully cover the total expenses of the Office, the Board of Governors shall provide to the Office an amount sufficient to cover the difference.

SEC. 156. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Office—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Rep-

resentatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Office shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) REPORTS.—

(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition, systems for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or sub-

sidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subtitle.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

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

(D) externally audited financial statements of such company or subsidiary.

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to determine—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of such company or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company with the requirements of this subtitle.

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any depository institution subsidiary or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

(1) provide to the primary financial regulatory agency for any company or subsidiary, reasonable notice before requiring a report, requesting information, or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the extent possible.

SEC. 162. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a

depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) NOTIFICATION OF COUNCIL.—If the primary financial regulatory agency does not initiate an action or enforcement proceeding before the end of the 30-day period beginning on the date on which such agency receives a recommendation under paragraph (1), the Board of Governors shall report to the Council the failure of the primary financial regulatory agency to initiate an action or enforcement proceeding.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of

the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E)

of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress

or failure of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards established under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000, but the Board of Governors may establish an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under subsections (b) through (f).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that may include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures; and

(iii) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards

set forth in paragraph (1) to foreign nonbank financial companies supervised by the Board of Governors and to foreign-based bank holding companies, the Board of Governors shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the

prudential standards established under paragraph (1) of this subsection; and

(C) take into account any recommendations of the Council under section 115.

(4) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to reporting to Congress, as required under section 115(c), the Board of Governors may promulgate regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of a conversion under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and

bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this section by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company, as applicable, of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a time frame determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary there-

of, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Gov-

ernors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), ''credit exposure'' to a company means—

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

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

(C) all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

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

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

(F) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

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

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial

company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

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

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(d)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations re-

quiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate cri-

teria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(h) STRESS TESTS.—The Board of Governors shall conduct analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether the companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions. The Board of Governors may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of

1956, the Board of Governors may require such company to establish and conduct such activities that are determined to be financial in nature or incidental thereto in an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days after the date on which the nonbank financial company supervised by the Board of Governors was notified of the determination under section 113(a).

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities conducted for a nonbank financial company supervised by the Board of Governors or any affiliate, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity of such company during the year prior to the date of enactment of this Act, such company may continue to engage in such activity as long as at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to such company, subject to review by the Board of Gov-

ernors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(c) REGULATIONS.—The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (a); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

SEC. 168. REGULATIONS.

Except as otherwise specified in this subtitle, not later than 18 months after the transfer date, the Board

of Governors shall issue final regulations to implement this subtitle and the amendments made by this subtitle.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board

of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) UPDATE.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(e) TRANSITION PERIOD.—No revisions under subsection (d) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(f) REPORT.—The Chairperson of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of the regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the ration-

ale for exemption and empirical evidence to support the criteria for exemption.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

SEC. 201. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ADMINISTRATIVE EXPENSES OF THE RECEIVER.—The term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

(2) BANKRUPTCY CODE.—The term ''Bankruptcy Code'' means title 11, United States Code.

(3) BRIDGE FINANCIAL COMPANY.—The term ''bridge financial company'' means a new financial company organized by the Corporation in accordance with section 210(h) for the purpose of resolving a covered financial company.

(4) CLAIM.—The term ''claim'' means any right of payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) COMPANY.—The term ''company'' has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), except that such term includes any company described in paragraph (12), the majority of the securities of which are owned by the United States or any State.

(6) COVERED BROKER OR DEALER.—The term ''covered broker or dealer'' means a covered financial company that is a broker or dealer that—

(A) is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

(B) is a member of SIPC.

(7) COVERED FINANCIAL COMPANY.—The term ''covered financial company''—

(A) means a financial company for which a determination has been made under section 203(b); and

(B) does not include an insured depository institution.

(8) COVERED SUBSIDIARY.—The term ''covered subsidiary'' means a subsidiary of a covered financial company, other than—

(A) an insured depository institution;

(B) an insurance company; or

(C) a covered broker or dealer.

(9) DEFINITIONS RELATING TO COVERED BROKERS AND DEALERS.—The terms ''customer'', ''customer property'', ''customer name securities'', and ''net equity'' in the context of a covered broker or dealer, have the same meanings as in section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll).

(10) DETERMINATION.—The term ''determination'' means a determination by the Secretary with respect to a financial company, as authorized under section 203(b).

(11) FINANCIAL COMPANY.—The term ''financial company'' means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State; and

(B) is—

(i) a bank holding company, as defined in section 2(a) of the Bank Holding

Company Act of 1956 (12 U.S.C. 1841(a)), and including any company described in paragraph (5);

(ii) a nonbank financial company supervised by the Board of Governors under this title;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) (other than a subsidiary that is an insured depository institution or an insurance company).

(12) FUND.—The term ''Fund'' means the Orderly Liquidation Fund established under section 210(n).

(13) INSURANCE COMPANY.—The term ''insurance company'' means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) PANEL.—The term ''Panel''means the Orderly Liquidation Authority Panel established under section 202.

(15) SIPC.—The term ''SIPC'' means the Securities Investor Protection Corporation.

SEC. 202. ORDERLY LIQUIDATION AUTHORITY PANEL.

(a) ORDERLY LIQUIDATION AUTHORITY PANEL.—

(1) ESTABLISHMENT.—There is established in the United States Bankruptcy Court for the District of Delaware, an Orderly Liquidation Authority Panel. The Chief Judge of the United States Bankruptcy Court for the District of Delaware shall appoint judges to the Panel, consistent with paragraph (2). In making such appointments, the Chief Judge shall consider the expertise in financial matters of each judge.

(2) COMPOSITION.—Each Panel shall be composed of 3 judges from the United States Bankruptcy Court for the District of Delaware.

(3) JURISDICTION.—The Panel shall have original and exclusive jurisdiction of proceedings to consider petitions by the Secretary under subsection (b)(1).

(b) COMMENCEMENT OF ORDERLY LIQUIDATION.—

(1) PETITION TO A PANEL.—

(A) ORDERLY LIQUIDATION AUTHORITY PANEL.—

(i) PETITION TO PANEL.—Subsequent to a determination by the Secretary under section 203 that a financial company meets the criteria in section 203(b), the Secretary, upon notice to the Corporation and the covered financial company, shall petition the Panel for an order authorizing the Secretary to appoint the Corporation as receiver.

(ii) FORM AND CONTENT OF ORDER.—The Secretary shall present all relevant findings and the recommendation made pursuant to section 203(a) to the Panel. The petition shall be filed under seal.

(iii) DETERMINATION.—On a strictly confidential basis, and without any prior

public disclosure, the Panel, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine, within 24 hours of receipt of the petition filed by the Secretary, whether the determination of the Secretary that the covered financial company is in default or in danger of default is supported by substantial evidence.

(iv) ISSUANCE OF ORDER.—If the Panel determines that the determination of the Secretary that the covered financial company is in default or in danger of default—

(I) the determination of the Secretary is supported by substantial evidence, the Panel shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

(II) is not supported by substantial evidence, the Panel shall immediately provide to the Secretary a written statement of each reason sup-

porting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

(B) EFFECT OF DETERMINATION.—The determination of the Panel under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (3). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Panel shall provide immediately for the record a written statement of each reason supporting the decision of the Panel, and shall provide copies thereof to the Secretary and the covered financial company.

(C) CRIMINAL PENALTIES.—A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.

(2) APPEAL OF DECISIONS OF THE PANEL.—

(A) APPEAL TO COURT OF APPEALS.—

(i) JURISDICTION.—Subject to clause (ii), the United States Court of Appeals for the Third Circuit shall have jurisdiction of an appeal of a final decision of the Panel filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), not later than 30 days after the date on which the decision of the Panel is rendered or deemed rendered under this subsection.

(ii) JURISDICTION.—The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company, did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

(iii) EXPEDITION.—The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

(iv) SCOPE OF REVIEW.—For an appeal taken under this subparagraph, review shall be limited to whether the determina-

tion of the Secretary that a covered financial company is in default or in danger of default is supported by substantial evidence.

(B) APPEAL TO THE SUPREME COURT.—

(i) IN GENERAL.—A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

(ii) WRITTEN STATEMENT.—In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

(iii) EXPEDITION.—The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

(iv) SCOPE OF REVIEW.—Review by the Supreme Court under this subparagraph, shall be limited to whether the determination of the Secretary that the covered financial company is in default or in danger of default is supported by substantial evidence.

(c) ESTABLISHMENT AND TRANSMITTAL OF RULES AND PROCEDURES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Panel shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (b)(1). The rules and procedures shall include provisions for the appointment of judges to the Panel, such that the composition of the Panel is established in advance of the filing of a petition under subsection (b).

(2) PUBLICATION OF RULES.—The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

(A) each judge of the Panel;

(B) the Chief Judge of the United States Bankruptcy Court for the District of Delaware;

(C) the Committee on the Judiciary of the Senate;

(D) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(E) the Committee on the Judiciary of the House of Representatives; and

(F) the Committee on Financial Services of the House of Representatives.

(d) PROVISIONS APPLICABLE TO FINANCIAL COMPANIES.—

(1) BANKRUPTCY CODE.—Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder, and not the provisions of this title, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

(2) THIS TITLE.—The provisions of this title shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases.

(e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDATION PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the activities of the Panel, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Panel; and

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

(2) REPORTS.—Not later than 1 year after the date of enactment of this Act, in each successive year until the third year, and every fifth year after that date of enactment, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate, reports summarizing the results of the studies conducted under paragraph (1).

(f) STUDY OF INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Comptroller General of the United States shall

evaluate, with respect to the bankruptcy process for financial companies—

(i) the extent to which international coordination currently exists;

(ii) current mechanisms and structures for facilitating international cooperation;

(iii) barriers to effective international coordination; and

(iv) ways to increase and make more effective international coordination.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

SEC. 203. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION AND DETERMINATION.—

(1) VOTE REQUIRED.—

(A) IN GENERAL.—On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of the members of the board of directors of the Corporation then serving.

(B) CASES INVOLVING COVERED BROKERS OR DEALERS.—In the case of a covered a broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a covered broker or dealer, the Commission and the Board of Governors, at the request of the Secretary, or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon

a vote of not fewer than ⅔ of the members of the Board of Governors then serving and the members of the Commission then serving, and in consultation with the Corporation.

(2) RECOMMENDATION REQUIRED.—Any written recommendation pursuant to paragraph (1) shall contain—

(A) an evaluation of whether the financial company is in default or in danger of default;

(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

(C) a recommendation regarding the nature and the extent of actions to be taken under this title regarding the financial company;

(D) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

(E) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company; and

(F) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal or State law, the Secretary shall take action in accordance with section 202(b)(1)(A), if, upon the written recommendation under in subsection (a), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

(3) no viable private sector alternative is available to prevent the default of the financial company;

(4) any effect on the claims or interests of creditors, counterparties and shareholders of the financial company and other market participants as a result of actions to be taken under this title is appropriate, given the impact that any action or assistance taken under this title would have on financial stability in the United States;

(5) any action under section 204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the

cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company; and

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulator order.

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) document any determination under subsection (b);

(B) retain the documentation for review under paragraph (2); and

(C) notify the covered financial company and the Corporation of such determination.

(2) REPORT TO CONGRESS.—Not later than 48 hours after the date of appointment of the Corporation as receiver for a covered financial company, the Secretary shall provide written notice of the determination of the Secretary under subsection (a) to the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate,

and the Committee on Financial Services of the House of Representatives, which shall consist of a summary of the basis for the determination, including, to the extent available at the time of the determination—

(A) the size and financial condition of the covered financial company;

(B) the sources of capital and credit support that were available to the covered financial company;

(C) the operations of the covered financial company that could have had a significant impact on financial stability, markets, or both;

(D) identification of the banks and financial companies which may be able to provide the services offered by the covered financial company;

(E) any potential international ramifications of resolution of the covered financial company under other applicable insolvency law;

(F) an estimate of the potential effect of the resolution of the covered financial company under other applicable insolvency law on the financial stability of the United States;

(G) the potential effect of the appointment of a receiver by the Secretary on consumers;

(H) the potential effect of the appointment of a receiver by the Secretary on the financial system, financial markets, and banks and other financial companies; and

(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

(3) REPORTS TO CONGRESS AND THE PUBLIC.—

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation, as receiver, shall—

(i) prepare reports setting forth information on the assets and liabilities of the covered financial company as of the date of the appointment;

(ii) file such reports with the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives; and

(iii) publish such reports on an online website maintained by the Corporation.

(B) AMENDMENTS.—The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise and resubmit the reports prepared under this paragraph, as necessary.

(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of this title, a financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

(A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others;

(D) the financial company is, or is likely to be, unable to pay its obligations (other than

those subject to a bona fide dispute) in the normal course of business; or

(E) the financial company, by resolution of its board of directors (or the body performing similar functions) or its shareholders or members, consents to the appointment.

(5) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), that results in the appointment of the Corporation as receiver, including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto;

(C) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors, counterparties, and shareholders; and

(D) the likely disruptive effect of the determination and such action on the reasonable expectations of creditors, counterparties and shareholders, taking into account the impact any action under this title would have on financial stability in the United States, including

whether the rights of such parties will be disrupted.

(d) CORPORATION POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this title, including the terms and conditions for the provision and use of funds under sections 204(d), 210(h)(2)(G)(iv), and 210(h)(9).

(e) TREATMENT OF INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES.—

(1) IN GENERAL.—Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under such State law.

(2) EXCEPTION FOR SUBSIDIARIES AND AFFILIATES.—The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of an insurance company that is not itself an insurance company.

(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 202(b) with respect to such company, the appropriate Federal regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

SEC. 204. ORDERLY LIQUIDATION.

(a) PURPOSE OF ORDERLY LIQUIDATION AUTHORITY.—It is the purpose of this title to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this title shall be exercised in the manner that best fulfills such purpose, with the strong presumption that—

(1) creditors and shareholders will bear the losses of the financial company;

(2) management responsible for the condition of the financial company will not be retained; and

(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

(b) CORPORATION AS RECEIVER.—Upon the appointment of the Corporation under section 202, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this title.

(c) CONSULTATION.—The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;

(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(K) of section 210, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

(d) FUNDING FOR ORDERLY LIQUIDATION.—Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 206 and subject to the plan described in section 210(n)(13), funds for the orderly liquidation of the covered financial company.

SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS AND DEALERS.

(a) APPOINTMENT OF SIPC AS TRUSTEE FOR PROTECTION OF CUSTOMER SECURITIES AND PROPERTY.—Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

(b) POWERS AND DUTIES OF SIPC.—

(1) IN GENERAL.—Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C.

78aaa et. seq.), including, without limitation, all rights of action against third parties, but shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered broker or dealer to any bridge financial company established in accordance with this title.

(2) LIMITATION OF POWERS.—The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

(A) any action, except as otherwise provided in this title—

(i) to make funds available under section 204(d);

(ii) to organize, establish, operate, or terminate any bridge financial company;

(iii) to transfer assets and liabilities;

(iv) to enforce or repudiate contracts; or

(v) to take any other action relating to such bridge financial company under section 210; or

(B) determining claims under subsection (d).

(3) QUALIFIED FINANCIAL CONTRACTS.—Notwithstanding any provision of the Securities Investor Protection Act of 1970 to the contrary, (including 15 U.S.C. 78eee(b)(2)(C)), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 210(c)(8)) to which a covered broker or dealer described in subsection (a) is a party shall be governed exclusively by section 210, including the limitations and restrictions contained in section 210(c)(10)(B).

(c) LIMITATION ON COURT ACTION.—Except as otherwise provided in this title, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accordance with subsection (e) and such claims shall be limited to money damages.

(d) ACTIONS BY CORPORATION AS RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, no action taken by the Corporation, as receiver with respect to a covered broker or dealer, shall—

(A) adversely affect the rights of a customer to customer property or customer name securities;

(B) diminish the amount or timely payment of net equity claims of customers; or

(C) otherwise impair the recoveries provided to a customer under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(2) NET PROCEEDS.—The net proceeds from any transfer, sale, or disposition of assets by the Corporation as receiver of the covered broker or dealer shall be for the benefit of the estate of the covered broker or dealer, as provided in this title.

(e) CLAIMS AGAINST THE CORPORATION AS RECEIVER.—Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

(1) shall be determined in accordance with section 210(a)(2); and

(2) may be reviewed by the appropriate district or territorial court of the United States in accordance with section 210(a)(5).

(f) SATISFACTION OF CUSTOMER CLAIMS.—

(1) OBLIGATIONS TO CUSTOMERS.—Notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property shall be promptly discharged by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the covered broker or dealer been subject to a proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

(2) SATISFACTION OF CLAIMS BY SIPC.—SIPC, as trustee for a covered broker or dealer, shall satisfy customer claims in the manner and amount provided under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), as if the appointment of the Corporation as receiver had not occurred, and with a filing date as of the date on which the Corporation is appointed as receiver. The

Corporation shall satisfy customer claims, to the extent that a customer would have received more securities or cash with respect to the allocation of customer property had the covered financial company been subject to a proceeding under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

(g) PRIORITIES.—

(1) CUSTOMER PROPERTY.—As trustee for a covered broker or dealer, SIPC shall allocate customer property and deliver customer name securities in accordance with section 8(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–2(c)).

(2) OTHER CLAIMS.—All claims other than those described in paragraph (1) (including any unpaid claim by a customer for the allowed net equity claim of such customer from customer property) shall be paid in accordance with the priorities in section 210(b).

(h) RULEMAKING.—The Commission and the Corporation, after consultation with SIPC, shall jointly issue rules to implement this section.

SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL ORDERLY LIQUIDATION ACTIONS.

In taking action under this title, the Corporation shall—

(1) determine that such action is necessary for purposes of the financial stability of the United States, and not for the purpose of preserving the covered financial company;

(2) ensure that the shareholders of a covered financial company do not receive payment until after all other claims and the Fund are fully paid;

(3) ensure that unsecured creditors bear losses in accordance with the priority of claim provisions in section 210; and

(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver).

SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to the ap-

pointment of the Corporation as receiver for the covered financial company under section 203.

SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.

(a) IN GENERAL.—Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 202 or the appointment of SIPC as trustee for a covered broker or dealer under section 205, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 shall be dismissed, upon notice to the Bankruptcy Court (with respect to a case commenced under the Bankruptcy Code), and upon notice to SIPC (with respect to a covered broker or dealer) and no such case or proceeding may be commenced with respect to a covered financial company at any time while the orderly liquidation is pending.

(b) REVESTING OF ASSETS.—Effective as of the date of appointment of the Corporation as receiver, the assets of a covered financial company shall, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code, the Securities Investor Protection Act of 1970, or any similar provision of State liquidation or

insolvency law applicable to the covered financial company, revest in the covered financial company.

(c) LIMITATION.—Notwithstanding subsections (a) and (b), any order entered or other relief granted by a bankruptcy court prior to the date of appointment of the Corporation as receiver shall continue with the same validity as if an orderly liquidation had not been commenced.

SEC. 209. RULEMAKING; NON-CONFLICTING LAW.

The Corporation shall, in consultation with the Council, prescribe such rules or regulations as the Corporation considers necessary or appropriate to implement this title, including rules and regulations with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons in respect of any covered financial company or any assets or other property of or held by such covered financial company. To the extent possible, the Corporation shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

SEC. 210. POWERS AND DUTIES OF THE CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon ap-

pointment as receiver for a covered financial company under this title, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATION OF THE COVERED FINANCIAL COMPANY DURING THE PERIOD OF ORDERLY LIQUIDATION.—The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—

(i) IN GENERAL.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

(ii) PRESUMPTION.—There shall be a strong presumption that the Corporation, as receiver for a covered financial company, will remove management responsible

for the failed condition of the covered financial company.

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up the affairs of a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ADDITIONAL POWERS WITH RESPECT TO FAILING SUBSIDIARIES OF A COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—In any case in which a receiver is appointed for a covered financial company under section 202, the Corporation may appoint itself as receiver

of any subsidiary (other than an insured depository institution, any covered broker or dealer or an insurance company) of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

(I) the subsidiary is in default or in danger of default;

(II) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States; and

(III) such action would facilitate the orderly liquidation of the covered financial company.

(ii) TREATMENT AS COVERED FINANCIAL COMPANY.—If the Corporation is appointed as receiver of a subsidiary of a covered financial company under clause (i), the subsidiary shall thereafter be considered a covered financial company under this title, and the Corporation shall thereafter have all the powers and rights with respect to that subsidiary as it has with re-

spect to a covered financial company under this title.

(F) ORGANIZATION OF BRIDGE COMPANIES.—The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including any assets and liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—With respect to a

transaction described in clause (i)(I) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

(II) if, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request; and

(III) if notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is

terminated earlier under subsection (b)(2) of such section 7A, or is extended pursuant to subsection (e)(2) of such section 7A.

(iii) SET-OFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable noninsolvency law.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

(I) APPLICABLE NON-INSOLVENCY LAW.—Except as may otherwise be provided in this title, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

(J) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This subparagraph may not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) under any other provision of law.

(K) INCIDENTAL POWERS.—The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this title, and such incidental powers as shall be necessary to carry out such powers under this title.

(L) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(M) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges de-

scribed in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claim provision under this section.

(N) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

(O) RESTRICTION ON TRANSFERS TO BRIDGE FINANCIAL COMPANY.—

(i) SECTION OF ACCOUNTS FOR TRANSFER.—If the Corporation establishes one or more bridge financial companies

with respect to a covered broker or dealer, the Corporation shall transfer to a bridge financial company, all customer accounts of the covered financial company unless the Corporation, after consulting with the Commission and SIPC, determines that—

(I) the customer accounts are likely to be promptly transferred to another covered broker or dealer; or

(II) the transfer of the accounts to a bridge financial company would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(ii) TRANSFER OF PROPERTY.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission, shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

(iii) CUSTOMER CONSENT AND COURT APPROVAL NOT REQUIRED.—Neither customer consent nor court approval shall be

required to transfer any customer accounts and associated customer property to a bridge financial company in accordance with this section.

(iv) NOTIFICATION OF SIPC AND SHARING OF INFORMATION.—The Corporation shall identify to SIPC the customer accounts and associated customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

(2) DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial

company, may determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.

(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) MAILING REQUIRED.—The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

(i) at the last address of the creditor appearing in such books;

(ii) in any claim filed by the claimant; or

(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30 days after the date of the discovery of such name and address.

(3) PROCEDURES FOR RESOLUTION OF CLAIMS.—

(A) DECISION PERIOD.—

(i) IN GENERAL.—Prior to the 180th day after a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it accepts or objects to the claim, in accordance with subparagraphs (B), (C), and (D).

(ii) EXTENSION OF TIME.—By written agreement executed within 180 days after the date on which a claim against a cov-

ered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant and the Corporation. Failure to notify the claimant of any disallowance within the time period set forth in clause (i), as it may be extended by agreement under this clause, shall be deemed to be a disallowance of such claim, and the claimant may file or continue an action in court, as provided in paragraph (4).

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books, records, or both of the covered financial company;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If the Corporation as receiver objects to any claim filed under clause (i), the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date

specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may object to any portion of any claim by a creditor or claim of a security, preference, set-off, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO UNDERSECURED CREDITORS.—In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal

to the fair market value of such property or other asset as an unsecured claim; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim

with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

(4) JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

(B) TIMING.—A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the

claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

(C) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(5) EXPEDITED DETERMINATION OF CLAIMS.—

(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

(i) the existence of a legally valid and enforceable or perfected security interest in property of a covered financial company, or is an entitlement holder that has obtained control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

(ii) that irreparable injury will occur if the claims procedure established under paragraph (3) is followed.

(B) DETERMINATION PERIOD.—Prior to the end of the 90-day period beginning on the date on which a claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim, or any portion thereof; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

(ii) notify the claimant of the determination; and

(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Corporation denies the claim or a portion thereof.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with sub-

paragraph (C), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(6) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

(7) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

(iii) determined by the final judgment of a court of competent jurisdiction.

(B) LIMITATION.—A creditor shall, in no event, receive less than the amount that the creditor is entitled to receive under paragraphs (2) and (3) of subsection (d), as applicable.

(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) RULEMAKING BY THE CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

(8) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

(9) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202)

and the Corporation, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this title, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority

as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) mitigates the potential for serious adverse effects to the financial system;

(iv) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

(10) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought

by the Corporation as receiver for a covered financial company shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(11) AVOIDABLE TRANSFERS.—

(A) FRAUDULENT TRANSFERS.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred on or

within 2 years before the time of commencement, if—

(i) the covered financial company voluntarily or involuntarily—

(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

(II) received less than a reasonably equivalent value in exchange for such transferor obligation; and

(ii) the covered financial company voluntarily or involuntarily—

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which

any property remaining with the covered financial company was an unreasonably small capital;

(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

(i) to or for the benefit of a creditor;

(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) that was made while the covered financial company was insolvent;

(iv) that was made—

(I) 90 days or less before the date on which the Corporation was appointed receiver; or

(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

(v) that enables the creditor to receive more than the creditor would receive if—

(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

(II) the transfer had not been made; and

(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of prop-

erty of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title by the Corporation as receiver.

(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), (B) or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii) from—

(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—Subject to the other provisions of this title—

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under; and

(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

(i) subparagraphs (A) and (B)—

(I) the term ''insider'' has the same meaning as in section 101(31) of the Bankruptcy Code;

(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

(III) the term ''value'' means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not include an unperformed promise to furnish support to the covered financial company; and

(ii) subparagraph (B)—

(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

(II) the term ''insolvent'' has the same meaning as in section 101(32) of the Bankruptcy Code.

(12) SETOFF.—

(A) GENERALLY.—Except as otherwise provided in this title, any right of a creditor to offset a mutual debt owing by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable non-insolvency law, except to the extent that—

(i) the claim of the creditor against the covered financial company is disallowed;

(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

(I) after the Corporation was appointed as receiver of the covered financial company; or

(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

(iii) the debt owed to the covered financial company was incurred by the covered financial company—

(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

(II) while the covered financial company was insolvent; and

(III) for the purpose of obtaining a right of setoff against the covered

financial company (except for a setoff in connection with a qualified financial contract).

(B) INSUFFICIENCY.—

(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owing to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; and

(II) the first day on which there is an insufficiency during the 90-day period preceding the date on which the Corporation is appointed as re-

ceiver for the covered financial company.

(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term ''insufficiency'' means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owing to the covered financial company by the holder of such claim.

(C) INSOLVENCY.—The term ''insolvent'' has the same meaning as in section 101(32) of the Bankruptcy Code.

(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable non-insolvency law.

(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may

sell or transfer any assets free and clear of the setoff rights of any party, except that such party shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), and (C) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(D), in an amount equal to the value of such setoff rights.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this title, any final and non-appealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as the Corporation determines to be appropriate regarding the management and disposition of

the records of a covered financial company for which the Corporation is appointed as receiver, with due regard for—

(I) the costs and other burdens imposed on the receiver by the maintenance of such records;

(II) the avoidance of duplicative record retention; and

(III) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

(ii) OLD RECORDS.—Notwithstanding clause (i), and, unless otherwise required by applicable Federal law or court order, the Corporation may, at any time, destroy any records of a covered financial company for which the Corporation is appointed receiver, beginning 10 years after the record was created or acquired by the covered financial company.

(iii) RECORDS DEFINED.—As used in this subparagraph, the terms ''records'' and ''records of a covered financial com-

pany'' mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (D) or (E)).

(D) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (E)).

(E) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be

treated in a similar manner, except that the Corporation as receiver may take any action (including making payments, subject to subsection (o)(1)(E)(i)) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—

(i) to maximize the value of the assets of the covered financial company;

(ii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(iii) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company.

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and

then only with regard to the difference between the claim and the amount realized from the security.

(6) PRIORITY OF EXPENSES AND UNSECURED CLAIMS IN THE ORDERLY LIQUIDATION OF A SIPC MEMBER.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver under section 205(e), shall have the priority prescribed in paragraph (1), except that—

(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15

U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

(D) the Corporation may, after paying any proven claims to customers under section 205 and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights of repudiation under this section within a reasonable period of time.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver ; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term ''actual direct compensatory damages'' does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this paragraph and subsection (d), except as other-

wise specifically provided in this subsection.

(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compen-

1 satory damages shall be no less than the esti-
2 mated value of the claim as of the date the Cor-
3 poration was appointed receiver of the covered
4 financial company, as such value is measured
5 based on the likelihood that such contingent
6 claim would become fixed and the probable
7 magnitude thereof.
8 (4) LEASES UNDER WHICH THE COVERED FI-
9 NANCIAL COMPANY IS THE LESSEE.—
10 (A) IN GENERAL.—If the Corporation as
11 receiver disaffirms or repudiates a lease under
12 which the covered financial company is the les-
13 see, the receiver shall not be liable for any dam-
14 ages (other than damages determined pursuant
15 to subparagraph (B)) for the disaffirmance or
16 repudiation of such lease.
17 (B) PAYMENTS OF RENT.—Notwith-
18 standing subparagraph (A), the lessor under a
19 lease to which subparagraph (A) would other-
20 wise apply shall—
21 (i) be entitled to the contractual rent
22 accruing before the later of the date on
23 which—
24 (I) the notice of disaffirmance or
25 repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the Corporation as receiver shall not be liable to the lessee for any damages

arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after

the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subpara-

graph (A) and sell the property, subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date on which the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); and

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), includ-

ing any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding subsections (a)(11), (a)(12), or (c)(12), section 5242 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a

1 certificate of deposit, a mortgage loan,
2 any interest in a mortgage loan, a
3 group or index of securities, certifi-
4 cates of deposit, or mortgage loans or
5 interests therein (including any inter-
6 est therein or based on the value
7 thereof), or any option on any of the
8 foregoing, including any option to
9 purchase or sell any such security,
10 certificate of deposit, mortgage loan,
11 interest, group or index, or option,
12 and including any repurchase or re-
13 verse repurchase transaction on any
14 such security, certificate of deposit,
15 mortgage loan, interest, group or
16 index, or option (whether or not such
17 repurchase or reverse repurchase
18 transaction is a ''repurchase agree-
19 ment'', as defined in clause (v));
20 (II) does not include any pur-
21 chase, sale, or repurchase obligation
22 under a participation in a commercial
23 mortgage loan unless the Corporation
24 determines by regulation, resolution,
25 or order to include any such agree-

ment within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agree-

ment, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for

future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any

agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 10 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'',

as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the

master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign govern-

ment securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors of the Federal Reserve System) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand,

against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agree-

ment shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, to-

morrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and condi-

tions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, with-

out regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV);and

(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of clauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraph (10)—

(I) the term ''default'' means, with respect to a covered financial

company, any adjudication or other official decision by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

(II) the term ''in danger of default'' means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(bb) in the opinion of the Corporation or such authority—

(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract

only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

(x) PERSON.—The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1).

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the 5th business day following the

date of the appointment of the Corporation as receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ''walkaway clause'' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(iv) CERTAIN OBLIGATIONS TO CLEARING ORGANIZATIONS.—In the event that the Corporation has been appointed as re-

ceiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in subsection (c)(9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F) or paragraph 10(B)) as required by the rules of the clearing organization when due, and such obligations shall not be suspended pursuant to paragraph (8)(F)(ii). Notwithstanding paragraph (8)(F) or (10)(B), if the receiver defaults on any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial con-

tract of the covered financial company, including, without limitation, the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

(G) RECORDKEEPING.—

(i) JOINT RULEMAKING.—The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Corporation as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraphs (9) or (10).

(ii) TIME FRAME.—The Federal primary financial regulatory agencies shall prescribe joint final or interim final regula-

tions not later than 24 months after the date of enactment of this Act.

(iii) BACK-UP RULEMAKING AUTHORITY.—If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the Corporation as receiver

for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more

qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation,

by regulation, to be a financial institution; and

(ii) the term ''clearing organization'' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—

(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(II) the transfer includes any qualified financial contract.

(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the 5th business day following the

date of the appointment of the Corporation as receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

(I) until 5:00 p.m. (eastern time) on the 5th business day following the date of the appointment; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for

a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a covered financial company for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified

financial contract to which a covered financial company is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company may enforce any contract, other than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(c)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Fed-

eral Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, finan-

cial condition, or receivership of the covered financial company, if—

(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

(3) SPECIAL PROVISION FOR ORDERLY LIQUIDATION BY SIPC.—The maximum liability of the

Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

(4) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—Subject to subsection (o)(4), the Corporation, as receiver for a covered financial company and with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

(B) LIMITATION.—Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(C) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this title, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious con-

duct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph

(A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business, but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more

bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities and privileges of

a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption

by a bridge financial company of rights, powers, authorities or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial com-

pany may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(iv) OPERATING FUNDS IN LIEU OF CAPITAL AND IMPLEMENTATION PLAN.—Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be

necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(13), funds for the operation of the bridge financial company in lieu of capital.

(H) BRIDGE BROKERS OR DEALERS.—

(i) IN GENERAL.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer and which shall, by operation of law and immediately upon approval of its articles of association—

(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;

(II) operate in accordance with such articles and this section; and

(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

(iv) OPERATION OF BRIDGE BROKERS OR DEALERS.—Notwithstanding any other

provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may

have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial

company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exer-

cising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments) that does not comply with this subparagraph, if—

(i) the Corporation determines that such action is necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company;

(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; or

(IV) to contain or address serious adverse effects to financial stability of the United States; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that

tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement is in writing, (ii) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company, and (iii) has been, since the time of its execution on official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at

the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(13), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

(10) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such no-

tification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

(12) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

(13) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to

a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

(14) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation, described in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another

State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had

merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the

bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company

in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in

the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(16) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(ii) HEARING.—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing.

(D) BURDEN OF PROOF.—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

(E) QUALIFIED FINANCIAL CONTRACTS.—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

(17) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company,

other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company or any other person employed by or providing services to a covered financial company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company.

As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(A) in the case of any covered financial company or bridge financial company that is or has a subsidiary that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name securities and customer property, as if such covered financial

company or bridge financial company were a debtor for purposes of such subchapter; or

(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 the Bankruptcy Code, in respect of the distribution to any customer of all customer property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the terms ''customer'', ''customer name securities'' and ''customer property'' have the same meanings as in section 741 of title 11, United States Code; and

(B) the terms ''commodity broker'' and ''stockbroker'' have the same meanings as in section 101 of the Bankruptcy Code.

(n) ORDERLY LIQUIDATION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the ''Orderly Liquidation Fund'', which shall be available to the Corporation to carry out the authorities contained in this title, for the

cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (9), and the exercise of the authorities of the Corporation under this title.

(2) PROCEEDS.—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (9), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

(3) MANAGEMENT.—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

(4) INVESTMENTS.—The Corporation shall invest amounts in the Fund in accordance with paragraph (8).

(5) TARGET SIZE OF THE FUND.—The target size of the Fund (in this section referred to as ''target size'') shall be $50,000,000,000, adjusted for inflation on a periodic basis by the Corporation.

(6) INITIAL CAPITALIZATION PERIOD.—The Corporation shall impose risk-based assessments as provided under subsection (o), during the period beginning one year after the date of enactment and ending on the date on which the Fund reaches the target size (in this section referred to as the ''initial capitalization period''), provided that the initial capitalization period shall be not shorter than 5 years, and not longer than 10 years from the date of enactment of this Act. The Corporation, with the approval of the Secretary, may extend the initial capitalization period, for a longer period as determined necessary by the Corporation, if the Corporation is appointed as receiver for a covered financial company under this title and the Fund incurs a loss before the expiration of such period.

(7) MAINTAINING THE FUND.—Upon the expiration of the initial capitalization period, the Corporation shall suspend assessments, except as set forth in subsection (o)(1).

(8) INVESTMENTS.—At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the

United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

(9) AUTHORITY TO ISSUE OBLIGATIONS.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this para-

graph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(10) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obliga-

tions outstanding under this subsection would exceed the sum of—

(A) the amount of cash or the cash equivalents held by the Fund; and

(B) the amount that is equal to 90 percent of the fair value of assets from each covered financial company that are available to repay the Corporation.

(C) RULEMAKING.—The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

(11) RELIANCE ON PRIVATE SECTOR FUNDING.—The Corporation may exercise its authority under paragraph (9) only after the cash and cash equivalents held by the Fund have been drawn down to facilitate the orderly liquidation of a covered financial company.

(12) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this section shall be construed to affect the authority of the Corporation under subsections (a) and (b) of section 14 section and 15(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a) and

(b); 12 U.S.C. 1825(c)(5)), the management of the Deposit Insurance Fund by the Corporation or the resolution of insured depository institutions; provided that, none of the authorities contained within this title shall be used to assist the Deposit Insurance Fund or with any of the Corporation's other responsibilities under applicable law other than this title, and the authorities of the Corporation relating to the Deposit Insurance Fund or its other responsibilities shall not be used to assist a covered financial company pursuant to this title.

(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

(13) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the

Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

(o) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENTS.—

(A) ASSESSMENTS TO CAPITALIZE THE FUND.—

(i) IN GENERAL.—Except as provided under subparagraph (C)(ii), the Corporation shall impose risk-based assessments on eligible financial companies to capitalize the Fund during the initial capitalization period, taking into account the considerations set forth in paragraph (4).

(ii) SUSPENSION OF ASSESSMENTS.—The Corporation shall suspend the imposition of assessments under clause (i) following a determination by the Corporation that the Fund has reached the target size described in subsection (n).

(B) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term ''eligible financial company'' means any bank holding company with total consolidated assets equal to or greater than $50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

(C) ADDITIONAL ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (E), if—

(i) the Fund falls below the target size after the initial capitalization period, in order to restore the Fund to the target size over a period of time determined by the Corporation;

(ii) the Corporation is appointed receiver for a covered financial company and the Fund incurs a loss during the initial capitalization period with respect to that covered financial company; or

(iii) such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary within 60

1 months of the date of issuance of such ob-
2 ligations.
3 (D) EXTENSIONS AUTHORIZED.—The Cor-
4 poration may, with the approval of the Sec-
5 retary, extend the time period under subpara-
6 graph (C)(iii), if the Corporation determines
7 that an extension is necessary to avoid a serious
8 adverse effect on the financial system of the
9 United States.
10 (E) APPLICATION OF ADDITIONAL ASSESS-
11 MENTS.—To meet the requirements of subpara-
12 graph (C), the Corporation shall impose assess-
13 ments—
14 (i) on—
15 (I) eligible financial companies;
16 and
17 (II) financial companies with
18 total consolidated assets over
19 $50,000,000,000 that are not eligible
20 financial companies, taking into ac-
21 count the considerations set forth in
22 paragraph (4); and
23 (ii) at a substantially higher rate than
24 otherwise would be assessed, taking into
25 account the considerations set forth in

paragraph (4), on any financial company that received payments or credit pursuant to subsections (b)(4) or (d)(4).

(F) NEW ELIGIBLE FINANCIAL COMPANIES.—The Corporation shall impose an assessment, in an amount determined by the Corporation in consultation with the Secretary and taking into account the considerations set forth in paragraph (4), on any company that becomes an eligible financial company after the initial capitalization period.

(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis that assesses financial companies having greater assets at a higher rate.

(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under this subsection, the Corporation shall—

(A) take into account economic conditions generally affecting financial companies, so as to allow assessments to be lower during less favorable economic conditions;

(B) take into account any assessments imposed on—

(i) an insured depository institution subsidiary of a financial company pursuant to section 7 or section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1823(c)(4)(G));

(ii) a financial company or subsidiary of such company that is a member of the Securities Investor Protection Corporation pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd); or

(iii) a financial company or subsidiary of such company that is an insurance company pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of rehabilitation, liquidation, or other State insolvency proceeding with respect to one or more insurance companies;

(C) take into account the financial condition of the financial company, including the extent and type of off-balance-sheet exposures of the financial company;

(D) take into account the risks presented by the financial company to the financial stability of the United States economy;

(E) take into account the extent to which the financial company or group of financial companies has benefitted, or likely would benefit, from the orderly liquidation of a covered financial company and the use of the Fund under this title;

(F) distinguish among different classes of assets or different types of financial companies (including distinguishing among different types of financial companies, based on their levels of capital and leverage) in order to establish comparable assessment bases among financial companies subject to this subsection;

(G) establish the parameters for the graduated assessment requirement in paragraph (2); and

(H) take into account such other factors as the Corporation deems appropriate.

(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

(6) RULEMAKING.—

(A) IN GENERAL.—The Corporation shall, in consultation with the Secretary and the Council, prescribe regulations to carry out this subsection.

(B) EQUITABLE TREATMENT.—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

(p) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) IN GENERAL.—No provision described in paragraph (2) shall be enforceable against or impose any liability on any person, as such enforcement or liability shall be contrary to public policy.

(2) PROHIBITED PROVISIONS.—A provision described in this paragraph is any term contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire;

(B) prohibits any person from offering to acquire or acquiring; or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of, all or part of any covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this title.

(q) OTHER EXEMPTIONS.—

(1) TAXATION AND LEVIES.—When acting as a receiver under this title, the following provisions shall apply to the Corporation:

(A) The Corporation including its franchise, its capital, reserves, and surplus, and its

income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(B) No property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

(C) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other

amount arising) under the Internal Revenue Code of 1986.

(3) EXEMPTION FROM CRIMINAL PROSECUTION.—The Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

(r) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceed $1,000,000, to such covered financial company;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit

such an offense, affecting any covered financial company; and

(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term ''default'' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

SEC. 211. MISCELLANEOUS PROVISIONS.

(a) CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.—Section 1032(1) of title 18, United States Code, is amended by inserting ''the Federal Deposit Insurance Corporation acting as receiver for a covered fi-

nancial company, in accordance with title II of the Restoring American Financial Stability Act of 2010,'' before ''or the National Credit''.

(b) CONFORMING AMENDMENT.—Section 1032 of title 18, United States Code, is amended in the section heading, by striking ''**of financial institution**''.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting ''section 210(c) of the Restoring American Financial Stability Act of 2010, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),'' after ''section 11(e) of the Federal Deposit Insurance Act,''.

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

SEC. 300. SHORT TITLE.

This title may be cited as the ''Enhancing Financial Institution Safety and Soundness Act of 2010''.

SEC. 301. PURPOSES.

The purposes of this title are—

(1) to provide for the safe and sound operation of the banking system of the United States;

(2) to preserve and protect the dual system of Federal and State-chartered depository institutions;

(3) to ensure the fair and appropriate supervision of each depository institution, regardless of the size or type of charter of the depository institution; and

(4) to streamline and rationalize the supervision of depository institutions and the holding companies of depository institutions.

SEC. 302. DEFINITION.

In this title, the term ''transferred employee'' means, as the context requires, an employee transferred to the Office of the Comptroller of the Currency or the Corporation under section 322.

Subtitle A—Transfer of Powers and Duties

SEC. 311. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in subsection (b), the term ''transfer date'' means the date that is 1 year after the date of enactment of this Act.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of the Currency, the

Director of the Office of Thrift Supervision, the Board of Governors, and the Corporation, may extend the period under subsection (a) and designate a transfer date that is not later than 18 months after the date of enactment of this Act, if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that commencement of the orderly process to implement this title is not feasible by the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary to commence the process of orderly implementation of this title;

(C) the transfer date designated under this subsection; and

(D) a description of the steps that will be taken to initiate the process of an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 270 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register no-

tice of any transfer date designated under paragraph (1).

SEC. 312. POWERS AND DUTIES TRANSFERRED.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

(b) FUNCTIONS OF THE OFFICE OF THRIFT SUPERVISION.—

(1) SAVINGS AND LOAN HOLDING COMPANY FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to—

(i) the supervision of—

(I) any savings and loan holding company having $50,000,000,000 or more in total consolidated assets; and

(II) any subsidiary (other than a depository institution) of a savings and loan holding company described in subclause (I); and

(ii) all rulemaking authority of the Office of Thrift Supervision and the Director

of the Office of Thrift Supervision relating to savings and loan holding companies.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in subparagraph (A), there are transferred to the Office of the Comptroller of the Currency all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to the supervision of—

(i) any savings and loan holding company—

(I) having less than $50,000,000,000 in total consolidated assets; and

(II) having—

(aa) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

(bb) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total

consolidated assets of all subsidiaries that are Federal depository institutions exceed the total consolidated assets of all subsidiaries that are State depository institutions; and

(ii) any subsidiary (other than a depository institution) of a savings and loan holding company described in clause (i).

(C) CORPORATION.—Except as provided in subparagraph (A), there are transferred to the Corporation all functions of the Office of Thrift Supervision (including the authority to issue orders) relating to the supervision of—

(i) any savings and loan holding company—

(I) having less than $50,000,000,000 in total consolidated assets; and

(II) having—

(aa) a subsidiary that is an insured depository institution, if all such insured depository institutions are State depository institutions; or

(bb) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

(ii) any subsidiary (other than a depository institution) of a savings and loan holding company described in clause (i).

(2) ALL OTHER FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—All rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 11 of the Home Owners' Loan Act (12 U.S.C. 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders is transferred to the Board of Governors.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1), there are

transferred to the Comptroller of the Currency—

(i) all rulemaking authority (including the authority to issue orders) of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings associations; and

(ii) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to Federal savings associations.

(C) CORPORATION.—Except as provided in paragraph (1), and subparagraph (B)(i), all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to State savings associations are transferred to the Corporation.

(c) CERTAIN FUNCTIONS OF THE BOARD OF GOVERNORS.—

(1) BANK HOLDING COMPANY FUNCTIONS TRANSFERRED.—

(A) COMPTROLLER OF THE CURRENCY.—Except as provided in subparagraph (C), there are transferred to the Office of the Comptroller of the Currency all functions of the Board of

Governors (including any Federal reserve bank) relating to the supervision of—

(i) any bank holding company—

(I) having less than $50,000,000,000 in total consolidated assets; and

(II) having—

(aa) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

(bb) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions exceed the total consolidated assets of all subsidiaries that are State depository institutions; and

(ii) any subsidiary (other than a depository institution) of a bank holding company that is described in clause (i).

(B) CORPORATION.—Except as provided in subparagraph (C), there are transferred to the Corporation all functions of the Board of Governors (including any Federal reserve bank) relating to the supervision of—

(i) any bank holding company—

(I) having less than $50,000,000,000 in total consolidated assets; and

(II) having—

(aa) a subsidiary that is an insured depository institution, if all such insured depository institutions are State depository institutions; or

(bb) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

(ii) any subsidiary (other than a depository institution) of a bank holding company that is described in clause (i).

(C) RULEMAKING AUTHORITY.—No rulemaking authority of the Board of Governors is transferred to the Office of the Comptroller of the Currency or the Corporation under this paragraph.

(2) OTHER FUNCTIONS TRANSFERRED.—There are transferred to the Corporation all functions (other than rulemaking authority under the Federal Reserve Act) of the Board of Governors (and any Federal reserve bank) relating to the supervision of insured State member banks.

(d) CONFORMING AMENDMENTS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended by striking paragraphs (1) through (4) and inserting the following:

''(1) the Office of the Comptroller of the Currency, in the case of—

''(A) any national banking association;

''(B) any Federal branch or agency of a foreign bank;

''(C) any bank holding company—

"(i) having less than $50,000,000,000 in total consolidated assets; and

"(ii) having—

"(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

"(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions exceed the total consolidated assets of all subsidiaries that are State depository institutions;

"(D) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (C);

"(E) any Federal savings association;

"(F) any savings and loan holding company—

"(i) having less than $50,000,000,000 in total consolidated assets; and

"(ii) having—

"(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

"(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions exceed the total consolidated assets of all subsidiaries that are State depository institutions; and

"(G) any subsidiary (other than a depository institution) of a savings and loan holding company that is described in subparagraph (F);

"(2) the Federal Deposit Insurance Corporation, in the case of—

"(A) any insured State bank;

"(B) any foreign bank having an insured branch;

"(C) any State savings association;

"(D) any bank holding company—

"(i) having less than $50,000,000,000 in total consolidated assets; and

"(ii) having—

"(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State depository institutions; or

"(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions;

"(E) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (D);

"(F) any savings and loan holding company—

"(i) having less than $50,000,000,000 in total consolidated assets; and

"(ii) having—

"(I) a subsidiary that is an insured depository institution, if all

such insured depository institutions are State depository institutions; or

"(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

"(G) any subsidiary (other than a depository institution) of a savings and loan holding company that is described in subparagraph (F);

"(3) the Board of Governors of the Federal Reserve System, in the case of—

"(A) any noninsured State member bank;

"(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

"(C) any foreign bank which does not operate an insured branch;

"(D) any agency or commercial lending company other than a Federal agency;

"(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

"(F) any bank holding company having total consolidated assets of $50,000,000,000 or more, and any subsidiary of such a bank holding company (other than a depository institution); and

"(G) any savings and loan holding company having total consolidated assets of $50,000,000,000 or more, and any subsidiary of such a savings and loan holding company (other than a depository institution).".

(2) CERTAIN REFERENCES IN THE BANK HOLDING COMPANY ACT OF 1956.—

(A) COMPTROLLER OF THE CURRENCY.—On or after the transfer date, in the case of a bank holding company described in section 3(q)(1)(C) of the Federal Deposit Insurance Act, as amended by this Act, any reference in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) to the Board of Governors

shall be deemed to be a reference to the Office of the Comptroller of the Currency.

(B) CORPORATION.—On or after the transfer date, in the case of a bank holding company described in section 3(q)(2)(D) of the Federal Deposit Insurance Act, as amended by this Act, any reference in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) to the Board of Governors shall be deemed to be a reference to the Corporation.

(C) RULE OF CONSTRUCTION.—Notwithstanding subparagraph (A) or (B), the Board of Governors shall retain all rulemaking authority under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(3) CONSULTATION IN HOLDING COMPANY RULEMAKING.—

(A) BANK HOLDING COMPANIES.—Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following:

"(h) CONSULTATION IN RULEMAKING.—Before proposing or adopting regulations under this Act that apply to bank holding companies having less than $50,000,000,000 in total consolidated assets, the Board

of Governors shall consult with the Comptroller of the Currency and the Federal Deposit Insurance Corporation as to the terms of such regulations.''.

(B) SAVINGS AND LOAN HOLDING COMPANIES.—

(i) HOME OWNERS' LOAN ACT.—Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended by adding at the end the following:

''(u) CONSULTATION IN RULEMAKING.—Before proposing or adopting regulations under this section that apply to savings and loan holding companies having less than $50,000,000,000 in total consolidated assets, the Board of Governors shall consult with the Comptroller of the Currency and the Federal Deposit Insurance Corporation as to the terms of such regulations.''.

(ii) FEDERAL DEPOSIT INSURANCE ACT.—Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended—

(I) in subsection (d)(2), by inserting '', in consultation with the Corporation and the Comptroller of the Currency,'' after ''System''; and

(II) in subsection (e)(2), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Board of Governors of the Federal Reserve System, in consultation with the Corporation and the Comptroller of the Currency,''.

(4) CONSULTATION IN SAVINGS ASSOCIATION RULEMAKING.—Section 3 of the Home Owners' Loan Act (12 U.S.C. 1462a) is amended by adding at the end the following:

''(k) CONSULTATION IN RULEMAKING.—Before proposing or adopting regulations applicable to State savings associations, the Comptroller of the Currency shall consult with the Federal Deposit Insurance Corporation as to the terms of such regulations.''.

(5) FEDERAL DEPOSIT INSURANCE ACT.—Section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)) is amended to read as follows:

''(3) APPLICATION TO BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND EDGE AND AGREEMENT CORPORATIONS.—

"(A) APPLICATION.—This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 shall apply to—

"(i) any bank holding company, and any subsidiary (other than a bank) of a bank holding company, as those terms are defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), as if such company or subsidiary was an insured depository institution for which the appropriate Federal banking agency for the bank holding company was the appropriate Federal banking agency;

"(ii) any savings and loan holding company, and any subsidiary (other than a depository institution) of a savings and loan holding company, as those terms are defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a), as if such company or subsidiary was an insured depository institution for which the appropriate Federal banking agency for the savings and loan holding company was the appropriate Federal banking agency; and

"(iii) any organization organized and operated under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) or operating under

section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.), as if such organization was a bank holding company for which the Board of Governors of the Federal Reserve System was the appropriate Federal banking agency.

"(B) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to alter or affect the authority of an appropriate Federal banking agency to initiate enforcement proceedings, issue directives, or take other remedial action under any other provision of law.".

(e) DETERMINATION OF TOTAL CONSOLIDATED ASSETS.—

(1) REGULATIONS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors, in order to avoid disruptive transfers of regulatory responsibility, shall issue joint regulations that specify—

(i) the source of data for determining the total consolidated assets of a depository institution, bank holding company, or savings and loan holding company for pur-

poses this Act, and the amendments made by this Act, including the amendments to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

(ii) the interval and frequency at which the total consolidated assets of a depository institution, bank holding company, or savings and loan holding company will be determined.

(B) CONTENT.—The regulations issued under subparagraph (A)—

(i) shall use information contained in the reports described in paragraph (2), other regulatory reports, audited financial statements, or other comparable sources;

(ii) shall establish the frequency with which the total consolidated assets of depository institutions, bank holding companies, and savings and loan companies are determined, at an interval that—

(I) avoids undue disruption in regulatory oversight;

(II) facilitates nondisruptive transfers of regulatory responsibility; and

(III) is not shorter than 2 years; and

(iii) may provide for more frequent determinations of the total consolidated assets of a depository institution, bank holding company, or savings and loan holding company, to take into account a transaction outside the ordinary course of business, including a merger, acquisition, or other circumstance, as determined jointly by the Comptroller of the Currency, the Corporation, and the Board of Governors, by rule.

(2) INTERIM PROVISIONS.—Until the date on which final regulations issued under paragraph (1) are effective, for purposes this Act, and the amendments made by this Act, including the amendments to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the total consolidated assets of—

(A) a depository institution shall be determined by reference to the total consolidated assets reported in the most recent Consolidated Report of Income and Condition or Thrift Financial Report (or any successor thereto) filed

by the depository institution with the Corporation or the Office of Thrift Supervision before the transfer date;

(B) a bank holding company shall be determined by reference to the total consolidated assets reported in the most recent Consolidated Financial Statements for Bank Holding Companies (commonly referred to as the ''FR Y–9C'', or any successor thereto) filed by the bank holding company with the Board of Governors before the transfer date; and

(C) a savings and loan holding company shall be determined by reference to the total consolidated assets reported in the applicable schedule of the most recent Thrift Financial Report (or any successor thereto) filed by the savings and loan holding company with the Office of Thrift Supervision before the transfer date.

(f) CONSUMER PROTECTION.—Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.

SEC. 313. ABOLISHMENT.

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

SEC. 314. AMENDMENTS TO THE REVISED STATUTES.

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

"SEC. 324. COMPTROLLER OF THE CURRENCY.

"(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ESTABLISHED.—There is established in the Department of the Treasury a bureau to be known as the 'Office of the Comptroller of the Currency' which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers, by the institutions and other persons subject to its jurisdiction.

"(b) COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.—The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any

regulation by the Comptroller of the Currency, and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law.

"(2) ADDITIONAL AUTHORITY.—The Comptroller of the Currency shall have the same authority with respect to functions transferred to the Comptroller of the Currency under the Enhancing Financial Institution Safety and Soundness Act of 2010 (including matters that were within the jurisdiction of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the transfer date under that Act) as was vested in the Director of the Office of Thrift Supervision on the transfer date under that Act.".

(b) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting before the period at the end the following: "or any Federal savings association".

(c) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 315. FEDERAL INFORMATION POLICY.

Section 3502(5) of title 44, United States Code, is amended by inserting ''Office of the Comptroller of the Currency,'' after ''the Securities and Exchange Commission,''.

SEC. 316. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 312(b) and 313 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that, for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision that is transferred to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors by this subtitle,

the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as appropriate, as a party to the action or proceeding as of the transfer date.

(b) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 312(c) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors, any Federal reserve bank, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Board of Governors or a Federal reserve bank before the transfer date, except that, for any action or proceeding arising out of a function of the Board of Governors or a Federal reserve bank transferred to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, or the Corporation by this subtitle, the Comptroller of the Currency, the Office of

the Comptroller of the Currency, the Chairperson of the Corporation, or the Corporation shall be substituted for the Board of Governors or the Federal reserve bank, as appropriate, as a party to the action or proceeding, as of the transfer date.

(c) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, AND OTHER MATERIALS.—

(1) OFFICE OF THRIFT SUPERVISION.—All orders, resolutions, determinations, agreements, regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions of the Office of Thrift Supervision that are transferred by this subtitle and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those materials, and shall be enforceable by or against the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as appropriate, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, the

Corporation, or the Board of Governors, as appropriate, by any court of competent jurisdiction, or by operation of law.

(2) BOARD OF GOVERNORS.—All orders, resolutions, determinations, agreements, regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Board of Governors, or by a court of competent jurisdiction, in the performance of functions of the Board of Governors that are transferred by this subtitle and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those materials, and shall be enforceable by or against the Office of the Comptroller of the Currency or the Corporation, as appropriate, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Corporation, as appropriate, by any court of competent jurisdiction, or by operation of law.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—

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

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

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

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

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

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

(3) BY THE BOARD OF GOVERNORS.—Not later than the transfer date, the Board of Governors shall—

(A) in consultation with the Comptroller of the Currency and the Corporation, identify the regulations continued under subsection (c) that will be enforced by the Board of Governors; and

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

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

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision or the Board of Governors, which that agency, in performing functions transferred by this subtitle, has proposed before the transfer date, but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as appropriate, according to its terms.

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

SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

(a) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION AND THE OFFICE OF THRIFT SUPERVISION.—Except as provided in section 312(d)(2), on and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 312(b) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate.

(b) BOARD OF GOVERNORS.—Except as provided in section 312(d)(2), on and after the transfer date, any reference in Federal law to the Board of Governors or any Federal reserve bank, in connection with any function of the Board of Governors or any Federal reserve bank transferred under section 312(c) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, or the Corporation, as appropriate.

SEC. 318. FUNDING.

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

(1) AUTHORITY TO COLLECT ASSESSMENTS, FEES, AND OTHER CHARGES, AND TO RECEIVE TRANSFERRED FUNDS.—Chapter 4 of title LXII of the Revised Statutes is amended by inserting after section 5240 (12 U.S.C. 481, 482) the following:

"SEC. 5240A. The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)), as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. The Comptroller of the Currency also may collect an assessment, fee, or other charge from any entity, the activities of which are supervised by the Comptroller of the Currency under section 6 of the Bank Holding Company Act of 1956, as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Comptroller in connection with such activities. In establishing the amount of an assessment, fee, or charge collected from an entity under this section, the Comptroller of the Currency may take into account the funds transferred to the Office of the Comptroller of the Currency under this section, the nature and scope of the activities

of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller of the Currency determines is appropriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under section 5240.

''The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section.''.

(2) PROMOTING PARITY IN SUPERVISION FEES.—

(A) PROPOSAL REQUIRED.—

(i) IN GENERAL.—The Comptroller of the Currency shall submit to the Board of Directors of the Corporation a proposal to

promote parity in the examination fees paid by State and Federal depository institutions having total consolidated assets of less than $50,000,000,000.

(ii) CONTENTS.—The proposal submitted under clause (i) shall recommend a transfer from the Corporation to the Office of the Comptroller of the Currency of a percentage of the amount that the Office of the Comptroller of the Currency estimates is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency associated with the supervision of Federal depository institutions having total consolidated assets of less than $50,000,000,000.

(iii) DATA COLLECTION.—The Corporation shall assist the Comptroller of the Currency in collecting data relative to the supervision of State depository institutions to develop the proposal submitted under clause (i).

(B) VOTE.—Not later than 60 days after the date of receipt of the proposal under sub-

paragraph (A), the Board of Directors of the Corporation shall—

(i) vote on the proposal; and

(ii) promptly implement a plan to periodically transfer to the Office of the Comptroller of the Currency a percentage of the amount that the Office of the Comptroller of the Currency estimates is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency associated with the supervision of Federal depository institutions having total consolidated assets of less than $50,000,000,000, as approved by the Board of Directors of the Corporation.

(C) REPORT TO CONGRESS.—Not later than 30 days after date of the vote of the Board of Directors of the Corporation under subparagraph (B), the Corporation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing—

(i) the proposal made to the Board of Directors of the Corporation by the Comptroller of the Currency; and

(ii) the decision resulting from the vote of the Board of Directors of the Corporation.

(D) FAILURE TO APPROVE PLAN.—If, on the date that is 2 years after the date of enactment of this Act, the Board of Directors of the Corporation has failed to approve a plan under subparagraph (B), the Council shall approve a plan using the dispute resolution procedures under section 119.

(b) FUNDING OF BOARD OF GOVERNORS.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

"(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

"(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the responsibilities of the Board with respect to such companies.

"(2) COMPANIES.—The companies described in this paragraph are—

"(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

"(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

"(C) all nonbank financial companies supervised by the Board under section 113 of the Restoring American Financial Stability Act of 2010.".

(c) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 319. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Office of the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire, in any lawful manner, such goods and services, or personal or real property (or property interest) as the Comptroller deems nec-

essary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

Subtitle B—Transitional Provisions

SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) IN GENERAL.—Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

(A) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;

(B) determine jointly, from time to time—

(i) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on

the date of enactment of this Act and ending on the transfer date;

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

(iii) what property and administrative services are necessary to support the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors during the period beginning on the date of enactment of this Act and ending on the transfer date; and

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

(2) AGENCY CONSULTATION.—When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

(A) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office

of Thrift Supervision is authorized by law to impose, such amounts as the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under paragraph (1);

(B) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under paragraph (1); and

(C) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under paragraph (1).

(3) NOTICE REQUIRED.—The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office

of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under paragraph (2).

(b) BOARD OF GOVERNORS.—

(1) IN GENERAL.—Before the transfer date, the Office of the Comptroller of the Currency and the Corporation shall—

(A) consult and cooperate with the Board of Governors to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency and the Corporation in accordance with this title;

(B) determine jointly, from time to time—

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

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

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

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

(2) AGENCY CONSULTATION.—When requested jointly by the Office of the Comptroller of the Currency and the Corporation to do so before the transfer date, the Board of Governors shall—

(A) pay to the Office of the Comptroller of the Currency or the Corporation, as applicable, from funds obtained by the Board of Governors through assessments, fees, or other charges that the Board of Governors is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency and the Corporation jointly determine to be necessary under paragraph (1);

(B) detail to the Office of the Comptroller of the Currency or the Corporation, as applicable, such personnel as the Office of the Comp-

troller of the Currency and the Corporation jointly determine to be appropriate under paragraph (1); and

(C) make available to the Office of the Comptroller of the Currency or the Corporation, as applicable, such property and provide to the Office of the Comptroller of the Currency or the Corporation, as applicable, such administrative services as the Office of the Comptroller of the Currency and the Corporation jointly determine to be necessary under paragraph (1).

(3) NOTICE REQUIRED.—The Office of the Comptroller of the Currency and the Corporation shall jointly give the Board of Governors reasonable prior notice of any request that the Office of the Comptroller of the Currency and the Corporation jointly intend to make under paragraph (2).

SEC. 322. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) OFFICE OF THRIFT SUPERVISION EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency

or the Corporation for employment in accordance with this section.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title; and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) BOARD OF GOVERNORS.—The Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors shall—

(A) jointly determine the number of employees of the Board of Governors (including employees of the Federal reserve banks who, on the day before the transfer date, are performing

functions on behalf of the Board of Governors) necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation under this title; and

(B) consistent with the determination under subparagraph (A), jointly identify employees of the Board of Governors (including employees of the Federal reserve banks who, on the day before the transfer date, are performing functions on behalf of the Board of Governors) for transfer to the Office of the Comptroller of the Currency or the Corporation.

(3) EMPLOYEES TRANSFERRED; SERVICE PERIODS CREDITED.—For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(4) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision or the Board of Governors under Federal law that relates to

the functions transferred under section 312, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

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

(5) ADDITIONAL APPOINTMENT AUTHORITY.—Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively. For purposes of this paragraph, an employee transferred from any

Federal reserve bank shall be treated as an employee of the Board of Governors.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under subsection (a)(1) shall—

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

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

(c) TRANSFER OF FUNCTIONS.—

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

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

(d) EMPLOYEE STATUS AND ELIGIBILITY.—The transfer of functions and employees under this subtitle, and the abolishment of the Office of Thrift Supervision under section 313, shall not affect the status of the trans-

ferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—

(A) OFFICE OF THRIFT SUPERVISION.—Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(B) BOARD OF GOVERNORS.—Each transferred employee from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as employees of the Office of the Comptroller of the Currency or the Corporation who perform similar functions and have similar periods of service.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred em-

ployee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

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

(2) EXCEPTIONS.—The Comptroller of the Currency and the Chairperson of the Corporation, as applicable, may—

(A) separate a transferred employee for cause, including for unacceptable performance; or

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

(h) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the date on which the employee was transferred under this subtitle, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contribu-

tions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before the date of the transfer of the employee to the Office of the Comptroller of the Currency or the Corporation may, during the period beginning 6 months after the transfer date and ending 1 year after the transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the transfer date.

(C) AGENCY PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for employees transferred to the Office of the Comptroller of the Currency or the Corporation under this title who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall deposit into the account es-

tablished under clause (i) the employer contributions that the Office of the Comptroller of the Currency or the Corporation, respectively, makes on behalf of transferred employees who do not make an election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Office Comptroller of the Currency or the Corporation, as appropriate, shall administer the account established under clause (i) as a participation employer in the Federal Reserve System retirement plan.

(D) DEFINITION.—In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental,

vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

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

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

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

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from

which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on

the date of enactment of this Act and the plan provided by the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) FUNDS TRANSFER.—The Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

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

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insur-

ance plan administered by an agency from which employees are transferred under this title on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from

which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall each implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other transferred employee on the basis of prior em-

ployment by the Office of Thrift Supervision, the Board of Governors, or a Federal reserve bank; and

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee.

(l) REORGANIZATION.—

(1) IN GENERAL.—If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(2) SERVICE CREDIT.—For purposes of this subsection, periods of service with a Federal home loan bank, a joint office of Federal home loan banks

or a Federal reserve bank shall be credited as periods of service with a Federal agency.

SEC. 323. PROPERTY TRANSFERRED.

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

(b) PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.—Not later than 90 days after the transfer date, all property of the Office of Thrift Supervision that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

(c) PROPERTY OF THE BOARD OF GOVERNORS.—

(1) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Board of Gov-

ernors that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine is used, on the day before the transfer date, to perform or support the functions of the Board of Governor transferred to the Office of the Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

(2) PROPERTY OF FEDERAL RESERVE BANKS.—Any property of any Federal reserve bank that, on the day before the transfer date, is used to perform or support the functions of the Board of Governors transferred to the Office of the Comptroller of the Currency or the Corporation by this title shall be treated as property of the Board of Governors for purposes of paragraph (1).

(d) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Cor-

poration, as appropriate, together with the property to which it relates.

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

SEC. 324. FUNDS TRANSFERRED.

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 325 and are available to the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(B), shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(C), shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(A), shall be transferred to the Board of Governors on the transfer date.

SEC. 325. DISPOSITION OF AFFAIRS.

(a) AUTHORITY OF DIRECTOR.—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—

(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 323; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision.

(b) STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfer of functions under this subtitle, during the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Director of the Office of Thrift Supervision on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this subtitle during such 90-day period.

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

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

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

(c) AUTHORITY OF CHAIRMAN OF THE BOARD OF GOVERNORS.—During the 90-day period beginning on the

transfer date, the Chairman of the Board of Governors shall—

(1) manage the employees of the Board of Governors who have not yet been transferred under this title and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(2) manage any property of the Board of Governors that is transferred under this title, until the date on which the property is transferred under section 323.

SEC. 326. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision or the Board of Governors in connection with functions transferred to the Office of the Comptroller of the Currency, the Corporation or the Board of Governors under this title, shall—

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Gov-

ernors, until the transfer of functions under this title is complete; and

(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

Subtitle C—Federal Deposit Insurance Corporation

SEC. 331. DEPOSIT INSURANCE REFORMS.

(a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraph (D); and

(2) by redesignating subparagraph (C) as subparagraph (D).

(b) ASSESSMENT BASE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term ''assessment base'' with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

(A) the average total consolidated assets of the insured depository institution during the assessment period; minus

(B) the sum of—

(i) the average tangible equity of the insured depository institution during the assessment period; and

(ii) the average long-term unsecured debt of the insured depository institution during the assessment period.

(2) DETERMINATION.—If, not later than 1 year after the date of enactment of this Act, the Corporation submits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, in writing, a finding that an amendment to the rules of the Corporation regarding the definition of the term ''assessment base'', as provided in paragraph (1), would reduce the effectiveness of the risk-based assessment system of the Corporation or increase the risk of loss to the Deposit Insurance Fund, the Corporation may—

(A) continue in effect the definition of the term ''assessment base'', as in effect on the day before the date of enactment of this Act; or

(B) establish, by rule, a definition of the term ''assessment base'' that the Corporation deems appropriate.

SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

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

(1) in subsection (a)(1)—

(A) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Director of the Consumer Financial Protection Bureau'';

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

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

(3) in subsection (f)(2), by striking ''or of the Office of Thrift Supervision''.

(b) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

Subtitle D—Termination of Federal Thrift Charter

SEC. 341. TERMINATION OF FEDERAL SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—Beginning on the date of enactment of this Act, the Director of the Office of Thrift Supervision, or the Comptroller of the Currency, may not issue a charter for a Federal savings association under section 5 of the Home Owners' Loan Act (12 U.S.C. 1464).

(b) CONFORMING AMENDMENT.—Section 5(a) of the Home Owner's Loan Act (12 U.S.C. 1464(a)) is amended to read as follows:

''(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Comptroller of the Currency is authorized, under such regulations as the Comptroller of the Currency may prescribe, to provide for the examination, operation, and regulation of associations to be known as 'Federal savings associations' (including Federal savings banks), giving primary consideration to the best practices of thrift institutions in the

United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.''.

(c) PROSPECTIVE REPEAL.—Effective on the date on which the Comptroller of the Currency determines that no Federal savings associations exist, section 5 of the Home Owner's Loan Act (12 U.S.C. 1464) is repealed.

SEC. 342. BRANCHING.

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank.

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Private Fund Investment Advisers Registration Act of 2010''.

SEC. 402. DEFINITIONS.

(a) INVESTMENT ADVISERS ACT OF 1940 DEFINITIONS.—Section 202(a) of the Investment Advisers Act of

1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

"(29) The term 'private fund' means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

"(30) The term 'foreign private adviser' means any investment adviser who—

"(A) has no place of business in the United States;

"(B) has fewer than 15 clients who are domiciled in or residents of the United States;

"(C) has assets under management attributable to clients who are domiciled in or residents of the United States of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

"(D) neither—

"(i) holds itself out generally to the public in the United States as an investment adviser; nor

"(ii) acts as—

"(I) an investment adviser to any investment company registered under the Investment Company Act of 1940; or

"(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.".

(b) OTHER DEFINITIONS.—As used in this title, the terms "investment adviser" and "private fund" have the same meanings as in section 202 of the Investment Advisers Act of 1940, as amended by this title.

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) in paragraph (1), by inserting ", other than an investment adviser who acts as an investment adviser to any private fund," before "all of whose";

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

"(3) any investment adviser that is a foreign private adviser;"; and

(3) in paragraph (5), by striking "or" at the end;

(4) in paragraph (6), by striking the period at the end and inserting "; or"; and

(5) by adding at the end the following:

"(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–54), who solely advises—

"(A) small business investment companies that are licensees under the Small Business Investment Act of 1958;

"(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

"(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the

Small Business Investment Act of 1958, which application remains pending.''.

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

''(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

''(1) IN GENERAL.—The Commission may require any investment adviser registered under this title—

''(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the 'Council'); and

''(B) to provide or make available to the Council those reports or records or the information contained therein.

"(2) TREATMENT OF RECORDS.—The records and reports of any private fund to which an investment adviser registered under this title provides investment advice to that private fund shall be deemed to be the records and reports of the investment adviser.

"(3) REQUIRED INFORMATION.—The records and reports required to be maintained by a private fund and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

"(A) the amount of assets under management and use of leverage;

"(B) counterparty credit risk exposure;

"(C) trading and investment positions;

"(D) valuation policies and practices of the fund;

"(E) types of assets held;

"(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

"(G) trading practices; and

"(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

"(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

"(5) FILING OF RECORDS.—The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

"(6) EXAMINATION OF RECORDS.—

"(A) PERIODIC AND SPECIAL EXAMINATIONS.—The Commission—

"(i) shall conduct periodic inspections of all records of private funds maintained by an investment adviser registered under this title in accordance with a schedule established by the Commission; and

"(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

"(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this title shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

"(7) INFORMATION SHARING.—

"(A) IN GENERAL.—The Commission shall make available to the Council copies of all reports, documents, records, and information filed

with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

"(B) CONFIDENTIALITY.—The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established by the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.".

"(8) COMMISSION CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

"(A) to withhold information from Congress, upon an agreement of confidentiality; or

"(B) prevent the Commission from complying with—

"(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

"(ii) an order of a court of the United States in an action brought by the United States or the Commission.

"(9) OTHER RECIPIENTS CONFIDENTIALITY.—Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).

"(10) PUBLIC INFORMATION EXCEPTION.—

"(A) IN GENERAL.—The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of

section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 210(b) of this title.

"(B) PROPRIETARY INFORMATION.—For purposes of this paragraph, proprietary information includes—

"(i) sensitive, non-public information regarding the investment or trading strategies of the investment adviser;

"(ii) analytical or research methodologies;

"(iii) trading data;

"(iv) computer hardware or software containing intellectual property; and

"(v) any additional information that the Commission determines to be proprietary.

"(11) ANNUAL REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.".

SEC. 405. DISCLOSURE PROVISION ELIMINATED.

Section 210(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10(c)) is amended by inserting before the period at the end the following: "or for purposes of assessment of potential systemic risk".

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: ", including rules and regulations defining technical, trade, and other terms used in this title"; and

(2) by adding at the end the following:

"(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, jointly promulgate rules to establish the form and

content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under this title and the Commodity Exchange Act (7 U.S.C. 1a et seq.).''.

SEC. 407. EXEMPTIONS OF VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

''(l) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—No investment adviser shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules to define the term 'venture capital fund' for purposes of this subsection.''.

SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRIVATE EQUITY FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

''(m) EXEMPTION OF AND REPORTING BY PRIVATE EQUITY FUND ADVISERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund or funds.

"(2) MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION.—Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules—

"(A) to require investment advisers described in paragraph (1) to maintain such records and provide to the Commission such annual or other reports as the Commission taking into account fund size, governance, investment strategy, risk, and other factors, as the Commission determines necessary and appropriate in the public interest and for the protection of investors; and

"(B) to define the term 'private equity fund' for purposes of this subsection.".

SEC. 409. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking "or (G)" and inserting the following: "(G) any family office, as defined by rule, regulation, or

order of the Commission, in accordance with the purposes of this title; or (H)''.

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term ''family office'' shall provide for an exemption that—

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act; and

(2) recognizes the range of organizational structures and management arrangements employed by family offices.

SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a(a)(1)) is amended —

(1) in subparagraph (A)—

(A) by striking ''$25,000,000'' and inserting ''$100,000,000''; and

(B) by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

"(C) is an adviser to a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn its election.".

SEC. 411. CUSTODY OF CLIENT ASSETS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

"SEC. 223. CUSTODY OF CLIENT ACCOUNTS.

"An investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.".

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD FOR INFLATION.

The Commission shall, by rule—

(1) increase the financial threshold for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, by calculating an amount that is greater than the amount in effect on the date of enactment of this Act of $200,000 income for a natural person (or

$300,000 for a couple) and $1,000,000 in assets, as the Commission determines is appropriate and in the public interest, in light of price inflation since those figures were determined; and

(2) adjust that threshold not less frequently than once every 5 years, to reflect the percentage increase in the cost of living.

SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVESTORS.

The Comptroller General of the United States shall conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study not later than 1 year after the date of enactment of this Act.

SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZATION FOR PRIVATE FUNDS.

The Comptroller General of the United States shall conduct a study of the feasibility of forming a self-regulatory organization to oversee private funds, private equity funds, and venture capital funds, and shall submit a re-

port to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study not later than 1 year after the date of enactment of this Act.

SEC. 415. COMMISSION STUDY AND REPORT ON SHORT SELLING.

(a) STUDY.—The Office of Risk, Strategy, and Financial Innovation of the Commission shall conduct a study, taking into account current scholarship, on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes and the incidence of—

(1) the failure to deliver shares sold short; or

(2) delivery of shares on the fourth day following the short sale transaction.

(b) REPORT.—The Office of Risk, Strategy and Financial Innovation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study conducted under subsection (a), not later than 2 years after the date of enactment of this Act.

SEC. 416. TRANSITION PERIOD.

Except as otherwise provided in this title, this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission.

TITLE V—INSURANCE

Subtitle A—Office of National Insurance

SEC. 501. SHORT TITLE.

This subtitle may be cited as the ''Office of National Insurance Act of 2010''.

SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL INSURANCE.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of subtitle I of title 31, United States Code, is amended—

(1) by redesignating section 312 as section 315;

(2) by redesignating section 313 as section 312; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

"SEC. 313. OFFICE OF NATIONAL INSURANCE.

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of National Insurance.

"(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

"(c) FUNCTIONS.—

"(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office, pursuant to the direction of the Secretary, shall have the authority—

"(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

"(B) to recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to title I of the Restoring American Financial Stability Act of 2010;

"(C) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

"(D) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating International Insurance Agreements on Prudential Measures;

"(E) to determine, in accordance with subsection (f), whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures;

"(F) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

"(G) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

"(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

"(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as such insurance is determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91).

"(e) GATHERING OF INFORMATION.—

"(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

"(A) receive and collect data and information on and from the insurance industry and insurers;

"(B) enter into information-sharing agreements;

"(C) analyze and disseminate data and information; and

"(D) issue reports regarding all lines of insurance except health insurance.

"(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or

information that the Office may reasonably require in carrying out the functions described under subsection (c).

"(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

"(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or any affiliate of an insurer, the Office shall coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator, individually or collectively, another regulatory agency, or publicly available sources. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

"(5) CONFIDENTIALITY.—

"(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

"(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

"(C) INFORMATION SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State in-

surance regulators, individually or collectively, through an information sharing agreement that—

"(i) shall comply with applicable Federal law; and

"(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

"(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

"(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of

the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

"(f) PREEMPTION OF STATE INSURANCE MEASURES.—

"(1) STANDARD.—A State insurance measure shall be preempted if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

"(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to an international insurance agreement on prudential measures than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

"(B) is inconsistent with an International Insurance Agreement on Prudential Measures.

"(2) DETERMINATION.—

"(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

"(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

"(ii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable International Insurance Agreement on Prudential Measures;

"(iii) provide interested parties a reasonable opportunity to submit written comments to the Office; and

"(iv) consider any comments received.

"(B) SCOPE OF REVIEW.—For purposes of this subsection, the determination of the Director regarding State insurance measures shall be limited to the subject matter contained within the international insurance agreement on prudential measure involved.

"(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

"(i) notify the appropriate State of the determination and the extent of the inconsistency;

"(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

"(iii) notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the inconsistency.

"(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

"(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

"(B) notify the appropriate State.

"(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

"(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review).

"(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.

"(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

"(j) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) preempt—

"(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

"(B) any State coverage requirements for insurance;

"(C) the application of the antitrust laws of any State to the business of insurance; or

"(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer;

"(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

"(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

"(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

"(l) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the

insurance industry, any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), and any other information as deemed relevant by the Director or as requested by such Committees.

"(m) STUDY AND REPORT ON REGULATION OF INSURANCE.—

"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

"(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

"(A) Systemic risk regulation with respect to insurance.

"(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

"(C) Consumer protection for insurance products and practices, including gaps in state regulation.

"(D) The degree of national uniformity of state insurance regulation.

"(E) The regulation of insurance companies and affiliates on a consolidated basis.

"(F) International coordination of insurance regulation.

"(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

"(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

"(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

"(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

"(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

"(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

"(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

"(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

"(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

"(iii) in the case of life insurance companies, the loss of the special status of separate account assets and separate account liabilities; and

"(iv) on the international competitiveness of insurance companies.

"(G) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

"(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.

"(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Director shall consult with the National Association of Insurance Commissioners, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

"(n) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and any other resource of the Department of the Treasury available to the Secretary.

"(o) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

"(2) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

"(3) INTERNATIONAL INSURANCE AGREEMENT ON PRUDENTIAL MEASURES.—The term 'International Insurance Agreement on Prudential Measures' means a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity regarding prudential measures applicable to the business of insurance or reinsurance.

"(4) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

"(5) OFFICE.—The term 'Office' means the Office of National Insurance established by this section.

"(6) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

"(7) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

"(8) UNITED STATES INSURER.—The term 'United States insurer' means—

"(A) an insurer that is organized under the laws of a State; or

"(B) a United States branch of a non-United States insurer.

"(p) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

"SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON PRUDENTIAL MEASURES.

"(a) IN GENERAL.—The Secretary of the Treasury is authorized to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States.

"(b) SAVINGS PROVISION.—Nothing in this section or section 313 shall be construed to affect the development and coordination of United States international trade policy or the administration of the United States trade agreements program. It is to be understood that the negotiation of International Insurance Agreements on Prudential

Measures under such sections is consistent with the requirement of this subsection.

"(c) CONSULTATION.—The Secretary shall consult with the United States Trade Representative on the negotiation of International Insurance Agreements on Prudential Measures, including prior to initiating and concluding any such agreements.".

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking "; and" and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

"Sec. 312. Terrorism and financial intelligence.
"Sec. 313. Office of National Insurance.
"Sec. 314. International insurance agreements on prudential measures.
"Sec. 315. Continuing in office.".

Subtitle B—State-based Insurance Reform

SEC. 511. SHORT TITLE.

This subtitle may be cited as the ''Nonadmitted and Reinsurance Reform Act of 2010''.

SEC. 512. EFFECTIVE DATE.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to

be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other

equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided

under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective date of this subtitle.

SEC. 527. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

(1) ADMITTED INSURER.—The term ''admitted insurer'' means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term ''affiliate'' means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term ''affiliated group'' means any group of entities that are all affiliated.

(4) CONTROL.—An entity has ''control'' over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term ''exempt commercial purchaser'' means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the

percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''home State'' means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term ''home State'' means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that

has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term ''independently procured insurance'' means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term ''nonadmitted insurance'' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) NON-ADMITTED INSURANCE MODEL ACT.—The term ''Non-Admitted Insurance Model Act'' means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) NONADMITTED INSURER.—The term ''nonadmitted insurer''—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

(12) QUALIFIED RISK MANAGER.—The term ''qualified risk manager'' means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or

entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has 1 of the following designations:

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as ''CPCU'') issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, fi-

nance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(13) PREMIUM TAX.—The term ''premium tax'' means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(14) SURPLUS LINES BROKER.—The term ''surplus lines broker'' means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

PART II—REINSURANCE

SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State,

or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the rein-

surance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile

of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

(1) CEDING INSURER.—The term ''ceding insurer'' means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms ''State of domicile'' and ''domiciliary State'' means, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) REINSURANCE.—The term ''reinsurance'' means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) REINSURER.—

(A) IN GENERAL.—The term ''reinsurer'' means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

PART III—RULE OF CONSTRUCTION

SEC. 541. RULE OF CONSTRUCTION.

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the ''Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010''.

SEC. 602. DEFINITION.

In this title, the term ''commercial firm'' means any entity that derives not less than 15 percent of the consolidated annual gross revenues of the entity, including all affiliates of the entity, from engaging in activities that are not financial in nature or incidental to activities that are financial in nature, as provided in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

(a) MORATORIUM.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''credit card bank'' means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(B) the term ''industrial bank'' means an institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(C) the term ''trust bank'' means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

(2) MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.—The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) that is received after November 10, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

(3) CHANGE IN CONTROL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Fed-

eral Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank that—

(i) is in danger of default, as determined by the appropriate Federal banking agency; or

(ii) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency.

(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act.

(b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to determine whether it is necessary, in order to strengthen the safety and soundness of institutions or the stability of the financial system, to eliminate the exceptions under section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) for institutions described in—

(A) section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E));

(B) section 2(a)(5)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(F));

(C) section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(D) section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(E) section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(F) section 2(c)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(B)).

(2) CONTENT OF STUDY.—

(A) IN GENERAL.—The study required under paragraph (1), with respect to the institutions referenced in each of subparagraphs (A) through (E) of paragraph (1), shall, to the extent feasible be based on information provided to the Comptroller General by the appropriate Federal or State regulator, and shall—

(i) identify the types and number of institutions excepted from section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) under each of the subparagraphs described in subparagraphs (A) through (E) of paragraph (1);

(ii) generally describe the size and geographic locations of the institutions described in clause (i);

(iii) determine the extent to which the institutions described in clause (i) are held

by holding companies that are commercial firms;

(iv) determine whether the institutions described in clause (i) have any affiliates that are commercial firms;

(v) identify the Federal banking agency responsible for the supervision of the institutions described in clause (i) on and after the transfer date;

(vi) determine the adequacy of the Federal bank regulatory framework applicable to each category of institution described in clause (i), including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

(vii) evaluate the potential consequences of subjecting the institutions described in clause (i) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe

and sound operation of each category of institution, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(B) SAVINGS ASSOCIATIONS.—With respect to institutions described in paragraph (1)(F), the study required under paragraph (1) shall—

(i) determine the adequacy of the Federal bank regulatory framework applicable to such institutions, including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

(ii) evaluate the potential consequences of subjecting the institutions described in paragraph (1)(F) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of such institutions, and the impact on the

types of activities in which such institutions, and the holding companies of such institutions, may engage.

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS BY BANK HOLDING COMPANIES.—Sections 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.—The appropriate Federal banking agency for a bank holding company shall, to the fullest extent possible, use—

"(i) reports and other supervisory information that the bank holding company

or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

"(ii) externally audited financial statements of the bank holding company or subsidiary;

"(iii) information otherwise available from Federal or State regulatory agencies; and

"(iv) information that is otherwise required to be reported publicly."; and

(2) by adding at the end the following:

"(C) AVAILABILITY.—Upon the request of the appropriate Federal banking agency for a bank holding company, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the appropriate Federal banking agency any information described in clauses (i) through (iii) of subparagraph (B).".

(b) EXAMINATIONS OF BANK HOLDING COMPANIES.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as follows:

"(2) EXAMINATIONS.—

"(A) IN GENERAL.—The appropriate Federal banking agency for a bank holding company may make examinations of the bank holding company and each subsidiary of the bank holding company in order to—

"(i) inform such appropriate Federal banking agency of—

"(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

"(II) the financial, operational and other risks within the bank holding company that may pose a threat to—

"(aa) the safety and soundness of any depository institution subsidiary of the bank holding company; or

"(bb) the stability of the financial system of the United States;

"(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

"(ii) enforce the compliance of the bank holding company and the subsidiary with this Act and any other Federal law that the appropriate Federal banking agency has specific jurisdiction to enforce against the bank holding company or subsidiary.

"(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this paragraph, the appropriate Federal banking agency for a bank holding company shall, to the fullest extent possible, rely on—

"(i) examination reports made by other Federal or State regulatory agencies relating to the bank holding company and any subsidiary of the bank holding company; and

"(ii) the reports and other information required under paragraph (1).

"(C) COORDINATION WITH OTHER REGULATORS.—The appropriate Federal banking agency for a bank holding company shall—

"(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State regulatory agency

of a subsidiary that is a depository institution or a functionally regulated subsidiary before requesting a report or other information from, or commencing an examination of the subsidiary under this section; and

"(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.".

(c) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 5(c) (12 U.S.C. 1844(c)), by striking paragraphs (3) and (4) and inserting the following:

"(3) [Reserved]

"(4) [Reserved]"; and

(2) by striking section 10A (12 U.S.C. 1848a).

(d) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following:

"(7) FINANCIAL STABILITY.—In every case, the appropriate Federal banking agency of a bank hold-

ing company shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.''.

(e) ACQUISITIONS OF NONBANKS.—

(1) NOTICE PROCEDURES.—Section 4(j)(2)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)(A)) is amended by striking ''or unsound banking practices'' and inserting ''unsound banking practices, or risk to the stability of the United States banking or financial system''.

(2) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—Section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B) is amended to read as follows:

''(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—

''(i) IN GENERAL.—Except as provided in clause (ii), a financial holding company may commence any activity or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the appropriate Federal bank-

ing agency for the financial holding company.

"(ii) EXCEPTION.—A financial holding company may not commence, without the prior approval of the appropriate Federal banking agency for the financial holding company, a transaction in which the total consolidated assets to be acquired by the financial holding company exceed $25,000,000,000.".

(f) BANK MERGER ACT TRANSACTIONS.—Section 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(5)) is amended, in the matter immediately following subparagraph (B), by striking "and the convenience and needs of the community to be served" and inserting "the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system".

(g) EXAMINATION OF SAVINGS AND LOAN HOLDING COMPANIES.—

(1) DEFINITIONS.—Section 2 of the Home Owners' Loan Act (12 U.S.C. 1462) is amended by adding at the end the following:

"(10) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency'

has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term 'functionally regulated subsidiary' has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).".

(2) EXAMINATION.—Section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)) is amended by striking paragraph (4) and inserting the following:

"(4) EXAMINATIONS.—

"(A) IN GENERAL.—The appropriate Federal banking agency for a savings and loan holding company may make examinations of the savings and loan holding company and each subsidiary of the savings and loan holding company, in order to—

"(i) inform such appropriate Federal banking agency of—

"(I) the nature of the operations and financial condition of the savings and loan holding company and the subsidiary;

"(II) the financial, operational and other risks within the savings and loan holding company that may pose a threat to—

"(aa) the safety and soundness of any depository institution subsidiary of the savings and loan holding company; or

"(bb) the stability of the financial system of the United States; and

"(III) the systems of the savings and loan holding company for monitoring and controlling the risks described in subclause (II); and

"(ii) enforce the compliance of the savings and loan holding company and the subsidiary with this section and any other Federal law that such appropriate Federal banking agency has specific jurisdiction to enforce against the savings and loan holding company or subsidiary.

"(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this subsection, the appropriate Federal banking agency for a sav-

ings and loan holding company shall, to the fullest extent possible, rely on—

"(i) the examination reports made by other Federal or State regulatory agencies relating to the savings and loan holding company and any subsidiary that is a depository institution or a functionally regulated subsidiary; and

"(ii) the reports required under paragraph (2).

"(C) COORDINATION WITH OTHER REGULATORS.—The appropriate Federal banking agency for a savings and loan holding company shall—

"(i) provide the Federal or State regulatory agency of a subsidiary that is a depository institution or a functionally regulated subsidiary with reasonable notice before requesting a report or other information from, or commencing an examination of. the subsidiary under this section; and

"(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for

information with respect to a subsidiary described in clause (i).''.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.

Section 6 of the Bank Holding Company Act of 1956 (12 U.S.C. 1845) is amended to read as follows:

''SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.

''(a) DEFINITIONS.—

''(1) DEFINITIONS.—In this section—

''(A) the term 'depository institution holding company' has the same meaning as in section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w));

''(B) the term 'functionally regulated subsidiary' has the same meaning as in section 5(c)(5); and

''(C) the term 'lead Federal banking agency' means—

"(i) the Office of the Comptroller of the Currency, in the case of any depository institution holding company having—

"(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

"(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions exceed the total consolidated assets of all subsidiaries that are State depository institutions; and

"(ii) the Federal Deposit Insurance Corporation, in the case of any depository institution holding company having—

"(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State depository institutions; or

"(II) a subsidiary that is a Federal depository institution and a sub-

sidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions.

"(2) DETERMINATION OF TOTAL CONSOLIDATED ASSETS.—For purposes of paragraph (1)(A), the total consolidated assets of a depository institution shall be determined in the same manner that total consolidated assets of depository institutions are determined for purposes of section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(b) LEAD AGENCY SUPERVISION.—

"(1) IN GENERAL.—The lead Federal banking agency for each depository institution holding company shall make examinations of the activities of each nondepository institution subsidiary (other than a functionally regulated subsidiary) of the depository institution holding company that are permissible for depository institution subsidiaries of the depository institution holding company, to determine whether the activities—

"(A) present safety and soundness risks to any depository institution subsidiary of the depository institution holding company;

"(B) are conducted in accordance with applicable law; and

"(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other risks of the activity and protecting the depository institution subsidiaries of the holding company.

"(2) PROCESS FOR EXAMINATION.—An examination under paragraph (1) shall be carried out under the authority of the lead Federal banking agency, as if the nondepository institution subsidiary were an insured depository institution for which the lead Federal banking agency is the appropriate Federal banking agency.

"(c) COORDINATION.—For each depository institution holding company for which the Board of Governors is the appropriate Federal banking agency, the lead Federal banking agency of the depository institution holding company shall coordinate the supervision of the activities of subsidiaries described in subsection (b) with the Board of Governors, in a manner that—

"(1) avoids duplication;

"(2) shares information relevant to the supervision of the depository institution holding company by each agency;

"(3) achieves the objectives of subsection (b); and

"(4) ensures that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the 2 agencies.

"(d) REFERRALS FOR ENFORCEMENT.—

"(1) RECOMMENDATION OF ACTION BY BOARD OF GOVERNORS.—The lead Federal banking agency for a depository institution holding company, based on information obtained pursuant to the responsibilities of the agency under subsection (b), may submit to the Board of Governors, in writing, a recommendation that the Board of Governors take enforcement action against a nondepository institution subsidiary of the depository institution holding company, together with an explanation of the concerns giving rise to the recommendation.

"(2) BACK-UP AUTHORITY OF THE LEAD FEDERAL BANKING AGENCY.—If, within the 60-day period beginning on the date on which the Board of Governors receives a recommendation under para-

graph (1), the Board of Governors does not take enforcement action against a nondepository institution subsidiary or provide a plan for enforcement action that is acceptable to the lead Federal banking agency, the lead Federal banking agency (upon the authorization of the Comptroller, or the Corporation upon a vote of its members, as applicable) may take the recommended enforcement action, in the same manner as if the subsidiary were an insured depository institution for which the lead Federal banking agency is the appropriate Federal banking agency.''.

SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

(a) AMENDMENT.—Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following:

''(C) the bank holding company is well capitalized and well managed; and''; and

(4) in subparagraph (D)(ii), as so redesignated, by striking ''subparagraphs (A) and (B)'' and inserting ''subparagraphs (A), (B), and (C)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended by striking ''adequately capitalized and adequately managed'' and inserting ''well capitalized and well managed''.

(b) INTERSTATE BANK MERGERS.—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended by striking ''will continue to be adequately capitalized and adequately managed'' and inserting ''will be well capitalized and well managed''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) AFFILIATE TRANSACTIONS.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking subparagraph (D) and inserting the following:

''(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and''; and

(B) in paragraph (7)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: '', including a purchase of assets subject to an agreement to repurchase'';

(ii) in subparagraph (C), by striking '', including assets subject to an agreement to repurchase,'';

(iii) in subparagraph (D)—

(I) by inserting ''or other debt obligations'' after ''acceptance of securities''; and

(II) by striking ''or'' at the end; and

(iv) by adding at the end the following:

''(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a

member bank or a subsidiary to have credit exposure to the affiliate; or

''(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''subsidiary'' and all that follows through ''time of the transaction'' and inserting ''subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be secured at all times''; and

(ii) in each of subparagraphs (A) through (D), by striking ''or letter of credit'' and inserting ''letter of credit, or credit exposure'';

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(D) in paragraph (2), as so redesignated, by inserting before the period at the end ", or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction"; and

(E) in paragraph (3), as so redesignated—

(i) by inserting "or other debt obligations" after "securities"; and

(ii) by striking "or guarantee" and all that follows through "behalf of," and inserting "guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to,";

(3) in subsection (d)(4), in the matter preceding subparagraph (A), by striking "or issuing" and all that follows through "behalf of," and inserting "issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to,"; and

(4) in subsection (f)—

(A) in paragraph (2)—

(i) by striking ''or order'';

(ii) by striking ''if it finds'' and all that follows through the end of the paragraph and inserting the following: ''if—

''(i) the Board finds the exemption to be in the public interest and consistent with the purposes of this section, and notifies the Chairperson of the Federal Deposit Insurance Corporation of such finding; and

''(ii) before the end of the 60-day period beginning on the date on which the Chairperson of the Federal Deposit Insurance Corporation receives notice of the finding under clause (i), the Chairperson of the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.'';

(iii) by striking the Board and inserting the following:

''(A) IN GENERAL.—The Board''; and

(iv) by adding at the end the following:

"(B) ADDITIONAL EXEMPTIONS.—

"(i) NATIONAL BANKS.—The Comptroller of the Currency may, by order, exempt a transaction of a national bank from the requirements of this section if—

"(I) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Chairperson of the Federal Deposit Insurance Corporation of such finding; and

"(II) before the end of the 60-day period beginning on the date on which the Chairperson of the Federal Deposit Insurance Corporation receives notice of the finding under subclause (I), the Chairperson of the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

"(ii) STATE BANKS.—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State bank from the requirements of this section if—

"(I) the Board and the Federal Deposit Insurance Corporation jointly find that the exemption is in the public interest and consistent with the purposes of this section; and

"(II) the Chairperson of the Federal Deposit Insurance Corporation finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund."; and

(B) by adding at the end the following:

"(4) AMOUNTS OF COVERED TRANSACTIONS.—The Board may issue such regulations or interpretations as the Board determines are necessary or appropriate with respect to the manner in which a netting agreement may be taken into account in determining the amount of a covered transaction between a member bank or a subsidiary and an affiliate, including the extent to which netting agreements between a member bank or a subsidiary and an affil-

iate may be taken into account in determining whether a covered transaction is fully secured for purposes of subsection (d)(4). An interpretation under this paragraph with respect to a specific member bank, subsidiary, or affiliate shall be issued jointly with the appropriate Federal banking agency for such member bank, subsidiary, or affiliate.''.

(b) TRANSACTIONS WITH AFFILIATES.—Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e)) is amended—

(1) by striking the undesignated matter following subparagraph (B);

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking ''The Board'' and inserting the following:

''(1) IN GENERAL.—The Board'';

(5) in paragraph (1)(B), as so redesignated—

(A) in the matter preceding clause (i), by inserting before ''regulations'' the following: ''subject to paragraph (2), if the Board finds

that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Chairperson of the Federal Deposit Insurance Corporation of such finding,''; and

(B) in clause (ii), by striking the comma at the end and inserting a period; and

(6) by adding at the end the following:

''(2) EXCEPTION.—The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Chairperson of the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.''.

(c) HOME OWNERS' LOAN ACT.—Section 11 of the Home Owners Loan Act (12 U.S.C. 1468) is amended by adding at the end the following:

''(d) EXEMPTIONS.—

''(1) FEDERAL SAVINGS ASSOCIATIONS.—The Comptroller of the Currency may, by order, exempt

a transaction of a Federal savings association from the requirements of this section if—

"(A) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Chairperson of the Federal Deposit Insurance Corporation of such finding; and

"(B) before the end of the 60-day period beginning on the date on which the Chairperson of the Federal Deposit Insurance Corporation receives notice of the finding under subparagraph (A), the Chairperson of the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

"(2) STATE SAVINGS ASSOCIATION.—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State savings association from the requirements of this section if the Board and the Federal Deposit Insurance Corporation jointly find that—

"(A) the exemption is in the public interest and consistent with the purposes of this section; and

"(B) the exemption does not present an unacceptable risk to the Deposit Insurance Fund.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

(a) AMENDMENT.—Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(b) PROSPECTIVE APPLICATION OF AMENDMENT.—The amendments made by this section shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

(a) NATIONAL BANKS.—Section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)) is amended—

(1) in paragraph (1), by striking ''shall include'' and all that follows through the end of the paragraph and inserting the following: ''shall include—

''(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

''(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

''(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities bor-

rowing transaction between the national banking association and the person;'';

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(3) the term 'derivative transaction' includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.''.

(b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(u)(3)) is amended by striking ''Director'' each place that term appears and inserting ''Comptroller of the Currency''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED STATE BANKS.

(a) AMENDMENT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) shall apply to each insured State bank, in the same manner and to the same extent as if the insured State bank were a national banking association.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 1 year after the transfer date.

SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The Act entitled "An Act to provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes." (12 U.S.C. 214 et seq.) is amended by adding at the end the following:

"SEC. 10. PROHIBITION ON CONVERSION.

"A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Comptroller of the Currency with respect to a significant supervisory matter.".

(b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised Statutes of the United States (12 U.S.C. 35) is amended by adding at the end the following: ''The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association during any period in which the State bank or State savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State supervisor with respect to a significant supervisory matter.''.

(c) CONVERSION OF A FEDERAL SAVINGS ASSOCIATION TO A NATIONAL OR STATE BANK OR STATE SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following:

''(6) LIMITATION ON CERTAIN CONVERSIONS BY FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings association may not convert to a national bank or State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Cur-

rency with respect to a significant supervisory matter.''.

SEC. 613. DE NOVO BRANCHING INTO STATES.

(a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes of the United States (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

''(A) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State; and''.

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

''(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and''.

SEC. 614. LENDING LIMITS TO INSIDERS.

(a) EXTENSIONS OF CREDIT.—Section 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C. 375b(9)(D)(i)) is amended—

(1) by striking the period at the end and inserting ''; or'';

(2) by striking ''a person'' and inserting ''the person'';

(3) by striking ''extends credit by making'' and inserting the following: ''extends credit to a person by—

''(I) making''; and

(4) by adding at the end the following:

''(II) having credit exposure to the person arising from a derivative transaction (as defined in section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b))), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

"(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act), unless—

"(A) the transaction is on market terms; and

"(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

"(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.".

(b) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22(d) of the Federal Reserve Act (12 U.S.C. 375) is amended to read as follows:

"(d) [Reserved]".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF HOLDING COMPANIES.

(a) CAPITAL LEVELS OF BANK HOLDING COMPANIES.—Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting after "regulations" the following: "(including regulations relating to the capital requirements of bank holding companies)".

(b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(g)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(g)(1)) is amended by inserting after "orders" the following: "(including regulations relating to capital requirements for savings and loan holding companies)".

(c) SOURCE OF STRENGTH.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 38 (12 U.S.C. 1831o) the following:

"SEC. 38A. SOURCE OF STRENGTH.

"(a) HOLDING COMPANIES.—The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

"(b) OTHER COMPANIES.—If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

"(c) REPORTS.—The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or indirectly controls the insured depository institution to submit a report, under oath, for the purposes of—

"(1) assessing the ability of such company to comply with the requirement under subsection (b); and

"(2) enforcing the compliance of such company with the requirement under subsection (b).

"(d) RULES.—Not later than 1 year after the transfer date, as defined in section 311 of the Enhancing Financial Institution Safety and Soundness Act of 2010, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

"(e) DEFINITION.—In this section, the term 'source of financial strength' means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 618. SECURITIES HOLDING COMPANIES.

(a) DEFINITIONS.—In this section—

(1) the term ''associated person of a securities holding company'' means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term ''foreign bank'' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7));

(3) the term ''insured bank'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) the term ''securities holding company''—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;

(ii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act

of 1956 (12 U.S.C. 1841(c)(2)) or an affiliate of a savings association;

(iii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a));

(iv) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(v) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term ''supervised securities holding company'' means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms ''affiliate'', ''bank'', ''bank holding company'', ''company'', ''control'', ''savings association'', and ''subsidiary'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(b) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—

(A) REGISTRATION.—A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) EFFECTIVE DATE.—A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that

is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

(1) RECORDKEEPING AND REPORTING.—

(A) RECORDKEEPING AND REPORTING REQUIRED.—Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) FORM AND CONTENTS.—

(i) IN GENERAL.—Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) CONTENTS.—Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) AVAILABILITY.—A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) EXAMINATION AUTHORITY.—

(A) FOCUS OF EXAMINATION AUTHORITY.—The Board of Governors may make ex-

aminations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) CAPITAL AND RISK MANAGEMENT.—

(1) IN GENERAL.—The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address

the risks posed to financial stability by supervised securities holding companies.

(2) DIFFERENTIATION.—In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

(3) CONTENT.—Any standards imposed on a supervised securities holding company under this subsection shall take into account—

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) NOTICE.—A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) OTHER PROVISIONS OF LAW APPLICABLE TO SUPERVISED SECURITIES HOLDING COMPANIES.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F),

or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) BANK HOLDING COMPANY ACT OF 1956.—Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company

for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY BANKS AND BANK HOLDING COMPANIES.

(a) DEFINITIONS.—In this section—

(1) the terms ''hedge fund'' and ''private equity fund'' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) or 80a-3(c)(7)), or a similar fund, as jointly determined by the appropriate Federal banking agencies;

(2) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring and disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book of such institution, company, or subsidiary; and

(B) does not include purchasing or selling, or otherwise acquiring and disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including hedging activities related to such a purchase, sale, acquisition, or disposal; and

(3) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2)

or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations

fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and

modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(d) INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE THE PUBLIC WELFARE.—

(1) IN GENERAL.—A prohibition imposed by the appropriate Federal banking agencies under sub-

section (c) shall not apply with respect an investment otherwise authorized under Federal law that is—

(A) an investment in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(B) designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) COVERED TRANSACTIONS.—An insured depository institution, a company that controls an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or pri-

vate equity fund may not enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with such hedge fund or private equity fund.

(2) AFFILIATION.—An insured depository institution, a company that controls an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) as if such institution, company, or subsidiary were a member bank and such hedge fund or private equity fund were an affiliate.

(f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR CERTAIN NONBANK FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the Board of Governors shall adopt rules imposing additional capital requirements and specifying additional quantitative limits for nonbank financial com-

panies supervised by the Board of Governors under section 113 that engage in proprietary trading or sponsoring and investing in hedge funds and private equity funds.

(2) EXCEPTIONS.—The rules under this subsection shall not apply with respect to the trading of an investment that is otherwise authorized by Federal law—

(A) in obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(B) in obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities;

(C) in obligations of any State or any political subdivision of a State;

(D) in a small business investment company, as that term is defined in section 103 of

the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(E) that is designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(g) COUNCIL STUDY AND RULEMAKING.—

(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this Act, the Council—

(A) shall complete a study of the definitions under subsection (a) and the other provisions under subsections (b) through (f), to assess the extent to which the definitions under subsection (a) and the implementation of subsections (b) through (f) would—

(i) promote and enhance the safety and soundness of depository institutions and the affiliates of depository institutions;

(ii) protect taxpayers and enhance financial stability by minimizing the risk that depository institutions and the affiliates of depository institutions will engage in unsafe and unsound activities;

(iii) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(iv) reduce inappropriate conflicts of interest between the self-interest of depository institutions, affiliates of depository institutions, and financial companies supervised by the Board, and the interests of the customers of such institutions and companies;

(v) raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States; and

(vi) limit activities that have caused undue risk or loss in depository institutions, affiliates of depository institutions, and financial companies supervised by the Board of Governors, or that might reasonably be expected to create undue risk or loss in such institutions, affiliates, and companies;

(B) shall make recommendations regarding the definitions under subsection (a) and the implementation of other provisions under subsections (b) through (f), including any modifications to the definitions, prohibitions, requirements, and limitations contained therein that the Council determines would more effectively implement the purposes of this section; and

(C) may make recommendations for prohibiting the conduct of the activities described in subsections (b) and (c) above a specific threshold amount and imposing additional capital requirements on activities conducted below such threshold amount.

(2) RULEMAKING.—Not earlier than the date of completion of the study required under paragraph (1), and not later than 9 months after the date of completion of such study—

(A) the appropriate Federal banking agencies shall jointly issue final regulations implementing subsections (b) through (e), which shall reflect any recommendations or modifications made by the Council pursuant to paragraph (1)(B); and

(B) the Board of Governors shall issue final regulations implementing subsection (f), which shall reflect any recommendations or modifications made by the Council pursuant to paragraph (1)(B).

(h) TRANSITION.—

(1) IN GENERAL.—The final regulations issued by the appropriate Federal banking agencies and the Board of Governors under subsection (g)(2) shall provide that, effective 2 years after the date on which such final regulations are issued, no insured depository institution, company that controls an insured depository institution, company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or subsidiary of such institution or company, may retain any investment or relationship prohibited under such regulations.

(2) EXTENSION.—

(A) IN GENERAL.—The appropriate Federal banking agency for an insured depository institution or a company described in paragraph (1) may, upon the application of any such company, extend the 2-year period under paragraph (1) with respect to such company, if the appro-

priate Federal banking agency determines that an extension would not be detrimental to the public interest.

(B) TIME PERIOD FOR EXTENSION.—An extension granted under subparagraph (A) may not exceed—

(i) 1 year for each determination made by the appropriate Federal banking agency under subparagraph (A); and

(ii) a total of 3 years with respect to any 1 company.

SEC. 620. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

"(a) DEFINITIONS.—In this section—

"(1) the term 'Council' means the Financial Stability Oversight Council;

"(2) the term 'financial company' means—

"(A) an insured depository institution;

"(B) a bank holding company;

"(C) a savings and loan holding company;

"(D) a company that controls an insured depository institution;

"(E) a nonbank financial company supervised by the Board; and

"(F) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and

"(3) the term 'liabilities' means—

"(A) with respect to a United States financial company—

"(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

"(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

"(B) with respect to a foreign-based financial company—

"(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the ap-

plicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

"(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

"(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

"(b) CONCENTRATION LIMIT.—Subject to the recommendations by the Council under subsection (e), a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

"(c) EXCEPTION TO CONCENTRATION LIMIT.—With the prior written consent of the Board, the concentration

limit under subsection (b) shall not apply to an acquisition—

"(1) of a bank in default or in danger of default;

"(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

"(3) that would result only in a de minimis increase in the liabilities of the financial company.

"(d) RULEMAKING AND GUIDANCE.—The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

"(e) COUNCIL STUDY AND RULEMAKING.—

"(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this section, the Council shall—

"(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competi-

tiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

"(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

"(2) RULEMAKING.—Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).".

TITLE VII—IMPROVEMENTS TO REGULATION OF OVER-THE-COUNTER DERIVATIVES MARKETS

SEC. 701. SHORT TITLE.

This title may be cited as the "Over-the-Counter Derivatives Markets Act of 2010".

SEC. 702. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in recent years, the global over-the-counter derivatives market in notional amounts outstanding has grown rapidly, from $91 trillion in 1998 to $592 trillion in 2008 according to the Bank for International Settlements;

(2) the interconnectedness of the country's largest financial institutions through the unregulated derivatives market raised significant concerns about counterparty risk exposures during the recent financial crisis;

(3) a substantial amount of American taxpayer money was used to make counterparty payments because there was insufficient margin and capital held by large financial institutions;

(4) although derivatives can be used to manage risk, they can also increase leverage and allow excessive risk-taking because market participants can take large positions on a relatively small capital base;

(5) in the over-the-counter derivatives market, margin requirements are set bilaterally and do not take into account the risk that each trade imposes on the rest of the financial system, thereby allowing systemically important exposures to build up without

sufficient capital to mitigate associated risks to American taxpayers and the financial system;

(6) in the recent crisis, fears about counterparty risk exposures caused credit markets to freeze, as market participants questioned the viability of counterparties and the safety of their own assets;

(7) lack of transparency about counterparty exposures and valuation of derivatives positions made it more difficult for regulators to respond to the crisis and made resolution of these positions more expensive for the taxpayer;

(8) bilaterally-executed derivatives contracts can provide key benefits to certain market participants and should be permitted under comprehensive regulation, but all derivatives activities should be accompanied by appropriate risk management and prudential standards;

(9) the derivatives market suffers from a lack of reliable and accurate transaction information that is available to the public, investors, market participants, and regulators, hampering surveillance and oversight of such markets;

(10) clearing more derivatives through well-regulated central counterparties will benefit the public

by reducing costs and risks to American taxpayers, the financial system, and market participants;

(11) trading more derivatives on regulated exchanges should be encouraged because it will result in more price transparency, efficiency in execution, and liquidity; and

(12) the Group of 20 nations agreed that—

(A) all standardized over-the-counter derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by the end of calendar year 2012 at the latest;

(B) over-the-counter derivative contracts should be reported to trade repositories; and

(C) non-centrally cleared contracts should be subject to higher capital requirements.

(b) PURPOSES.—The purposes of this title are—

(1) to establish well-regulated markets for derivatives to increase transparency and reduce costs and risks to American taxpayers, the financial system, and market participants; and

(2) to promote the public interest, the protection of investors, the protection of market partici-

pants, and the maintenance of fair and orderly markets to assure—

(A) the prompt and accurate clearance and settlement of transactions in derivatives that can be cleared through a central counterparty;

(B) the prompt and accurate reporting of transactions to regulators and trade repositories;

(C) the availability to the public, investors, market participants, and regulators of reliable and accurate quotation and transaction information in derivatives;

(D) economically efficient execution of transactions in swaps and security-based swaps; and

(E) fair competition among markets in the trading of swaps and security-based swaps.

Subtitle A—Regulation of Swap Markets

SEC. 711. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraph (34) as paragraph (35);

(2) by adding after paragraph (33) the following:

"(34) SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

"(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other

rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

"(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

"(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

"(B) EXCLUSIONS.—The term 'swap' does not include—

"(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

"(ii) any sale of a nonfinancial commodity or any security for deferred shipment or delivery, so long as such transaction is physically settled;

"(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

"(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

"(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis;

"(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)); or

"(viii) any agreement, contract, or transaction that is—

"(I) based on a security; and

"(II) entered into directly or through an underwriter, as that term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11)), by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

"(ix) any foreign exchange swap;

"(x) any foreign exchange forward;

"(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

"(xii) any security-based swap, other than a security-based swap as described in section 3(a)(68)(C) of the Securities Ex-

change Act of 1934 (15 U.S.C. 78c(a)(68)(C)).

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).";

(3) in paragraph (12)—

(A) in subparagraph (A)—

(i) in clause (ii), by striking "determined by the Commission" and inserting "determined jointly by the Commission and the Securities and Exchange Commission";

(ii) in clause (v)—

(I) in subclause (I)—

(aa) by inserting ''net'' after ''total''; and

(bb) by inserting ''or'' after the semicolon;

(II) in subclause (II), by striking ''the obligations'' and all that follows through ''$1,000,000; and'' and inserting the following:

''(II) that——

''(aa) has total net assets exceeding $5,000,000; and'';

(iii) in clause (vii), by striking ''except that'' and all that follows through ''section 2(c)(2)(B)(ii);'' and inserting the following: ''except that such term does not include a State or an entity, political subdivision, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless the State, entity, political subdivision, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments, provided that, with respect to any State or entity, political subdivision,

instrumentality, agency or department of a State, such amount is exclusive of any proceeds from any offering of municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29));''; and

(iv) in clause (xi), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis'';

(v) in clause (xi), by striking ''an individual'' and all that follows through ''of—'' and inserting ''a natural person who—''; and

(vi) in clause (xi)—

(I) in subclause (I), by inserting ''owns and invests on a discretionary basis in excess of'' before ''$10,000,000''; and

(II) in subclause (II), by inserting ''owns and invests on a discretionary basis in excess of'' before ''$5,000,000''; and

(B) in subparagraph (C), by striking ''determines'' and inserting ''and the Securities and

Exchange Commission may further jointly determine";

(4) in paragraph (29)—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(C) by redesignating subparagraph (E) as subparagraph (F);

(D) in subparagraph (C) (as so redesignated), by striking "and"; and

(E) by inserting after subparagraph (C) (as so redesignated) the following:

"(D) an alternative swap execution facility registered under section 5h;

"(E) a swap repository; and"; and

(5) by adding after paragraph (35) (as so redesignated) the following:

"(36) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(37) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

"(38) SWAP DEALER.—

"(A) IN GENERAL.—The term 'swap dealer' means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise.

"(B) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

"(39) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer and—

"(i) who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or

"(ii) whose failure to perform under the terms of its swaps would cause significant credit losses to its swap counterparties.

"(B) IMPLEMENTATION.—The Commission shall implement the definition under this paragraph by rule or regulation in a manner that is

prudent for the effective monitoring, management, and oversight of the financial system.

"(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)).

"(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

"(42) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)).

"(43) GOVERNMENT SECURITY.—The term 'government security' has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).

"(44) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

"(45) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

"(46) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(70)).

"(47) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term 'person associated with a swap dealer or major swap participant' or 'associated person of a swap dealer or major swap participant' means—

"(A) any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions);

"(B) any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant; or

"(C) any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6) of this Act.

"(48) SWAP REPOSITORY.—The term 'swap repository' means any person that collects, calculates, processes, or prepares information with respect to transactions or positions in swaps or security-based swaps.

"(49) PRIMARY FINANCIAL REGULATORY AGENCY.—The term 'primary financial regulatory agency' has the same meaning as in section 2 of the Restoring American Financial Stability Act of 2010.".

(b) JOINT RULEMAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt a rule or

rules further defining the terms ''swap'', ''security-based swap'', ''swap dealer'', ''security-based swap dealer'', ''major swap participant'', ''major security-based swap participant'', and ''eligible contract participant'' not later than 180 days after the effective date of this title.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(c) JOINT RULEMAKING UNDER THIS TITLE.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be uniform.

(2) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.

(3) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products similarly.

(4) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(5) JOINT INTERPRETATION.—Any interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission

and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by adding at the end the following: ''The Commission shall not have the authority to grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Markets Act of 2010, except as expressly authorized under the provisions of that Act.''.

SEC. 712. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

(1) by inserting ''the Over-the-Counter Derivatives Markets Act of 2010 and'' after ''otherwise provided in'';

(2) by striking ''subsections (c) through (i)'' and inserting ''subsections (c) and (f)''; and

(3) by striking ''involving contracts of sale'' and inserting ''involving swaps, or contracts of sale''.

(b) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'';

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

"(ii) a swap; or".

(c) LIMITATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by amending subsection (g) to read as follows:

"(g) EXCLUSION FOR SECURITIES.—Notwithstanding any other provision of law, the Over-the-Counter Derivatives Markets Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to, any security other than a security-based swap.".

SEC. 713. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) REPEALS.—Subsections (d), (e), and (h) of section 2 of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), and 2(h)) are repealed.

(2) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

"(d) SWAPS.—Nothing in this Act, other than subsections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(G), (f), and (j), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-

sions of this Act as are applicable by their terms to registered entities and Commission registrants, governs or applies to a swap.

"(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.".

(3) CLEARING REQUIREMENT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by adding at the end the following:

"(j) CLEARING REQUIREMENT.—

"(1) SUBMISSION.—

"(A) IN GENERAL.—Except as provided in paragraph (9), any person who is a party to a swap shall submit such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(j) of this Act.

"(B) REQUIRED CONDITIONS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

"(i) prescribe that all swaps with the same terms and conditions accepted for

clearing by the derivatives clearing organization are fungible and may be offset with each other; and

"(ii) provide for nondiscriminatory clearing of a swap executed on or through the rules of an unaffiliated designated contract market or an alternative swap execution facility.

"(2) COMMISSION APPROVAL.—

"(A) IN GENERAL.—A derivatives clearing organization shall submit to the Commission for prior approval any group, category, type, or class of swaps that the derivatives clearing organization seeks to accept for clearing, which submission the Commission shall make available to the public.

"(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the derivatives clearing organization submitting the request agrees to an extension of the time limitation established under this subparagraph.

"(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such

terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with section 5b(c)(2). The Commission shall approve any such request if the Commission does not make such finding.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission shall adopt rules for a derivatives clearing organization's submission for approval, pursuant to this paragraph, of any group, category, type, or class of swaps that the derivative clearing organization seeks to accept for clearing.

"(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

"(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the

swap, or the group, category, type, or class of swaps, and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or the group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A)—

"(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or the group, category, type, or class of swaps, must be cleared pursuant to this subsection if the Commission finds that such clearing—

"(I) is consistent with section 5b(c)(2); and

"(II) is otherwise in the public interest, for the protection of inves-

tors, and consistent with the purposes of this title;

"(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the swap, or the group, category, type, or class of swaps; or

"(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then it shall still be permissible to clear such swap, or the group, category, type, or class of swaps.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps that the Commission has accepted for clearing.

"(4) SWAPS REQUIRED TO BE ACCEPTED FOR CLEARING.—

"(A) RULEMAKING.—Not later than 180 days of the date of enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange

Commission shall jointly adopt rules to further identify any group, category, type, or class of swaps not submitted for approval under paragraph (2) that the Commission and Securities and Exchange Commission deem should be accepted for clearing. In adopting such rules, the Commission and the Securities and Exchange Commission shall take into account the following factors:

"(i) The extent to which any of the terms of the group, category, type, or class of swaps, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.

"(ii) The volume of transactions in the group, category, type, or class of swaps.

"(iii) The extent to which the terms of the group, category, type, or class of swaps are similar to the terms of other agreements, contracts, or transactions that are centrally cleared.

"(iv) Whether any differences in the terms of the group, category, type, or class of swaps, compared to other agreements,

contracts, or transactions that are centrally cleared, are of economic significance.

"(v) Whether a derivatives clearing organization is prepared to clear the group, category, type, or class of swaps and such derivatives clearing organization has in place effective risk management systems.

"(vi) Any other factors the Commission and the Securities and Exchange Commission determine to be appropriate.

"(B) OTHER DESIGNATIONS.—At any time after the adoption of the rules required under subparagraph (A), the Commission may separately designate a particular swap or class of swaps as subject to the clearing requirement in paragraph (1), taking into account the factors described in clauses (i) through (vi) of subparagraph (A) and the joint rules adopted under such subparagraph.

"(5) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this subsection pro-

vided that any such rules or interpretations shall be issued jointly to be effective.

"(6) REQUIRED REPORTING.—

"(A) BOTH COUNTERPARTIES.—Both counterparties to a swap that is not cleared by any derivatives clearing organization shall report such a swap either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

"(B) TIMING.—Counterparties to a swap shall submit the reports required under subparagraph (A) not later than such time period as the Commission may by rule or regulation prescribe.

"(7) TRANSITION RULES.—

"(A) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(i) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than

180 days after the effective date of this subsection.

"(ii) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than the later of—

"(I) 90 days after such effective date; or

"(II) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(B) CLEARING TRANSITION RULES.—

"(i) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(i).

"(ii) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(ii).

"(8) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing

requirement of paragraph (1), counterparties shall—

"(i) execute the transaction on a board of trade designated as a contract market under section 5; or

"(ii) execute the transaction on an alternative swap execution facility registered under section 5h or an alternative swap execution facility that is exempt from registration under section 5h(f) of this Act.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or alternative swap execution facility makes the swap available to trade.

"(9) EXEMPTIONS.—

"(A) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of paragraphs (1) and (8), and any rules issued under this subsection, if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap for clearing.

"(B) PERMISSIVE EXEMPTION.—The Commission by rule or order, in consultation with the Financial Stability Oversight Council and as the Commission deems consistent with the public interest, may conditionally or unconditionally exempt a swap from the requirements of paragraphs (1) and (8), and any rules issued under this subsection, if 1 of the counterparties to the swap—

"(i) is not a swap dealer or major swap participant; and

"(ii) does not meet the eligibility requirements of any derivatives clearing organization that clears the swap.

"(C) OPTION TO CLEAR.—If a swap is exempt from the clearing requirements of paragraph (1)—

"(i) the parties to the swap may submit the swap for clearing; and

"(ii) the swap shall be submitted for clearing upon the request of a party to the swap.".

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) IN GENERAL.—Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) are amended to read as follows:

"(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9) with respect to—

"(1) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

"(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

"(B) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(2) a swap.

"(b) VOLUNTARY REGISTRATION.—

"(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements, contracts,

or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.

"(2) CLEARING AGENCIES.—A derivatives clearing organization may clear security-based swaps that are required to be cleared by a person who is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

(2) REQUIRED REGISTRATION.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

"(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—Any person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether that person is also a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing—

"(1) the clearing and settlement of swaps, as well as persons that are registered as derivatives clearing organizations for swaps under this section; and

"(2) the clearing and settlement of security-based swaps, as well as persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(i) CONSULTATION.—The Commission and the Securities and Exchange Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section with respect to swaps.

"(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that such derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, or the appropriate governmental authorities in the organization's home country.

"(k) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall perform the following duties:

"(A) Reporting directly to the board or to the senior officer of the derivatives clearing organization.

"(B) Reviewing the compliance of the derivatives clearing organization with the core principles established in section 5b(c)(2).

"(C) Consulting with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, to resolve any conflicts of interest that may arise.

"(D) Administering the policies and procedures of the derivatives clearing organization required to be established pursuant to this section.

"(E) Ensuring compliance with this Act and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

"(F) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this subparagraph include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS REQUIRED.—

"(A) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the organization, including the code of ethics and conflict of interest policies of the organization, in accordance with rules prescribed by the Commission.

"(B) SUBMISSION.—The compliance report required under subparagraph (A) shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that,

under penalty of law, the report is accurate and complete.''.

(3) CORE PRINCIPLES.—Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) is amended to read as follows:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

''(A) COMPLIANCE.—

''(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles established in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(ii) REASONABLE DISCRETION.—Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which it complies with the core principles established in this paragraph.

''(B) FINANCIAL RESOURCES.—

"(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

"(ii) MINIMUM RESOURCES.—The financial resources of each derivatives clearing organization shall, at a minimum, exceed the total amount that would—

"(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

"(II) enable the organization to cover its operating costs for a period of 1 year, calculated on a rolling basis.

"(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

"(i) STANDARDS.—Each derivatives clearing organization shall establish—

"(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of and participants in the organization; and

"(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.

"(ii) ONGOING VERIFICATION.—Each derivatives clearing organization shall have procedures in place to verify that its participation and membership requirements are met on an ongoing basis.

"(iii) FAIR STANDARDS.—Each derivatives clearing organization's participation and membership requirements shall be objective, publicly disclosed, and permit fair and open access.

"(D) RISK MANAGEMENT.—

"(i) IN GENERAL.—Each derivatives clearing organization shall have the ability

to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

"(ii) CREDIT EXPOSURE.—Each derivatives clearing organization shall measure its credit exposures to its members and participants at least once each business day and shall monitor such exposures throughout the business day.

"(iii) LIMITING EXPOSURE.—Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit its exposures to potential losses from defaults by its members and participants so that the operations of the organization would not be disrupted and nondefaulting members or participants would not be exposed to losses that such members or participants cannot anticipate or control.

"(iv) MARGIN REQUIREMENTS.—The margin required by a derivatives clearing organization from its members and partici-

pants shall be sufficient to cover potential exposures in normal market conditions.

"(v) RISK-BASED MARGIN REQUIREMENTS.—The models and parameters used by a derivatives clearing organization in setting the margin requirements under clause (iv) shall be risk-based and reviewed regularly.

"(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

"(i) complete money settlements on a timely basis, and not less than once each business day;

"(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

"(iii) ensure money settlements are final when effected;

"(iv) maintain an accurate record of the flow of funds associated with each money settlement;

"(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations;

"(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries; and

"(vii) identify and manage the risks from the obligations described under clause (vi).

"(F) TREATMENT OF FUNDS.—

"(i) SAFETY OF FUNDS.—Each derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

"(ii) HOLDING OF FUNDS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the organization's access to the assets and funds is minimized.

"(iii) MINIMIZING RISKS.—Assets and funds invested by a derivatives clearing or-

ganization shall be held in instruments with minimal credit, market, and liquidity risks.

"(G) DEFAULT RULES AND PROCEDURES.—

"(i) INSOLVENCY ISSUES.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the organization.

"(ii) DEFAULT PROCEDURES.—The default procedures of each derivatives clearing organization shall be clearly stated, and shall ensure that the organization can take timely action to contain losses and liquidity pressures and to continue meeting its obligations.

"(iii) PUBLIC AVAILABILITY.—The default procedures of each derivatives clearing organization shall be publicly available.

"(H) ENFORCEMENT.—Each derivatives clearing organization shall—

"(i) maintain adequate arrangements and resources for the effective—

"(I) monitoring and enforcement of compliance with the rules of the organization; and

"(II) resolution of disputes; and

"(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant for violations of the rules of the organization.

"(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

"(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the respon-

sibilities and obligations of the organization; and

"(iii) periodically conduct tests to verify that backup resources are sufficient to ensure daily processing, clearing, and settlement.

"(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.

"(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain for a period of 5 years records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission.

"(L) PUBLIC INFORMATION.—

"(i) IN GENERAL.—Each derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

"(ii) AVAILABILITY OF RULES.—Each derivatives clearing organization shall

make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

"(iii) ADDITIONAL DISCLOSURES.—Each derivatives clearing organization shall disclose publicly, and to the Commission, information concerning—

"(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

"(II) clearing and other fees that the organization charges its members and participants;

"(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;

"(IV) other information relevant to participation in the settlement and clearing activities of the organization; and

"(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.

"(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

"(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

"(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.

"(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, a derivatives clearing organization shall avoid—

"(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

"(ii) imposing any material anticompetitive burden.

"(O) GOVERNANCE FITNESS STANDARDS.—

"(i) TRANSPARENCY.—Each derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of owners and participants.

"(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this clause.

"(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the organization and establish a process for resolving such conflicts of interest.

"(Q) COMPOSITION OF THE BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing

board or committee includes market participants.

"(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of its activities.

"(S) MODIFICATION OF CORE PRINCIPLES.—The Commission may conform the core principles established in this paragraph to reflect evolving United States and international standards.".

(4) REPORTING.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is further amended by adding after subsection (k), as added by this section, the following:

"(l) REPORTING.—

"(1) TRANSPARENCY.—

"(A) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission and any swap repository designated by the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act.

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data col-

lection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on alternative swap execution facilities.

"(C) REPORTS ON SECURITY-BASED SWAP AGREEMENTS TO BE SHARED WITH THE SECURITIES AND EXCHANGE COMMISSION.—A derivatives clearing organization that clears security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act) shall, upon request for the protection of investors and in the public interest, make available to the Securities and Exchange Commission all information relating to such security-based swap agreements.

"(D) SHARING OF INFORMATION.—Subject to section 8, the Commission shall share such information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Stability Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including for-

eign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).''.

(5) EXISTING BANKS AND CLEARING AGENCIES.—Section 5b(c) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)) is amended by adding at the end the following:

''(4) EXISTING BANKS AND CLEARING AGENCIES.—A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the date of the enactment of this paragraph. Such bank or clearing agency

shall be subject to the requirements of this Act and regulations of the Commission thereunder that are applicable to registered derivatives clearing organizations. A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.''.

(6) TECHNICAL CHANGE.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence—

(A) by inserting '', central bank and ministries,'' after ''department'' each place that term appears; and

(B) by striking ''futures authority.'' and inserting ''futures authority,''.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

"(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

"(1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under such Act with respect to, an identified banking product; and

"(2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.

"(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

"(1) would meet the definition of swap in section 1a(34) of the Commodity Exchange Act or se-

curity-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

"(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified banking product that—

"(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

"(2) meets the definition of swap in section 1a(34) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

"(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding at the end the following:

"(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) derivatives clearing organizations pursuant to section 5b(k)(2);

"(B) swap repositories pursuant to section 21(c)(3); and

"(C) reports received by the Commission pursuant to section 4r.".

SEC. 715. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

"SEC. 21. SWAP REPOSITORIES.

"(a) REGISTRATION REQUIREMENT.—

"(1) IN GENERAL.—A person may register as a swap repository by filing with the Commission an application in such form as the Commission, by rule, may prescribe, containing the rules of the swap repository and such other information and documentation as the Commission, by rule, may prescribe as necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of this section.

"(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

"(3) SHARING OF INFORMATION WITH SECURITIES AND EXCHANGE COMMISSION.—Registered swap repositories shall make available to the Securities and Exchange Commission, upon request, all information relating to security-based swap agreements that are maintained by such swap repository.

"(b) STANDARD SETTING.—

"(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

"(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

"(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

"(c) DUTIES.—A swap repository shall—

"(1) accept data prescribed by the Commission for each swap under subsection (b);

"(2) maintain such data in such form and manner and for such period as may be required by the Commission;

"(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

"(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap

repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Stability Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(d) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a swap repository under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

''(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform

rules that specify the data elements that shall be collected and maintained by each repository.

''(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, or the appropriate governmental authorities in the organization's home country.''.

SEC. 716. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

''SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

''(a) IN GENERAL.—Any person who enters into a swap shall satisfy the reporting requirements of subsection (b), if such person—

''(1) did not clear the swap in accordance with section 2(j)(1); and

''(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including time frames) adopted by the Commission under section 21.

"(b) REPORTS.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

"(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Stability Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.".

SEC. 717. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

(a) IN GENERAL.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 716) the following:

"SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

''(a) REGISTRATION.—It shall be unlawful for any person—

''(1) to act as a swap dealer unless such person is registered as a swap dealer with the Commission; and

''(2) to act as a major swap participant unless such person shall have registered as a major swap participant with the Commission.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—The application required under paragraph (1) shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (c), (d), and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

"(5) TRANSITION.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act of 2010.

"(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of such swap dealer or major swap participant, if such swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

"(c) DUAL REGISTRATION.—

"(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a security-based swap dealer.

"(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a major security-based swap participant.

"(d) JOINT RULES.—

"(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules for persons that are registered—

"(A) as swap dealers or major swap participants under this section; and

"(B) as security-based swap dealers or major security-based swap participants under

the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Securities and Exchange Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on swap dealers, major swap participants, security-based swap dealers, or major security-based swap participants for which there is a primary financial regulatory agency. This provision shall not be construed as limiting the authority of the Commission and the Securities and Exchange Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation margin requirements as such primary financial regulatory agency shall by rule or regulation prescribe

under paragraph (2)(A) to help ensure the safety and soundness of the swap dealer or major swap participant.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation jointly prescribe under paragraph (2)(B) to help ensure the safety and soundness of the swap dealer or major swap participant.

"(2) JOINT RULES.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Not later than 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the primary financial regulatory agency, the Commission, and the Securities and Exchange Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap par-

ticipants for which there is a primary financial regulatory agency.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Not later than 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is not a primary financial regulatory agency.

"(3) CAPITAL.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—The capital requirements prescribed under paragraph (2)(A) for bank swap dealers and major swap participants shall contain—

"(i) a capital requirement that is greater than zero for swaps that are cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j) of this Act; and

"(ii) to offset the greater risk to the swap dealer or major swap participant and to the financial system arising from the use of swaps that are not centrally cleared, substantially higher capital requirements for swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j) of this Act than for swaps that are centrally cleared.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—The capital requirements prescribed under paragraph (2)(B) for nonbank swap dealers and major swap participants shall be as strict as or stricter than the capital requirements prescribed for bank swap dealers and major swap participants under paragraph (2)(A).

"(C) RULE OF CONSTRUCTION.—

"(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

"(I) of the Commission to set financial responsibility rules for a fu-

tures commission merchant or introducing broker registered pursuant to section 4f(a) of this title (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of this title; or

"(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (except for section 15(b)(11) thereof) in accordance with section 15(c)(3) of the Securities Exchange Act of 1934.

"(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this title or the Securities Exchange Act of 1934.

"(4) MARGIN.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—

"(i) IN GENERAL.—The primary financial regulatory agency for bank swap dealers and major swap participants shall impose both initial and variation margin requirements in accordance with paragraph (2)(A) on all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j) of this Act.

"(ii) EXEMPTION.—The primary financial regulatory agency for bank swap dealers and major swap participants, by rule or order, in consultation with the Financial Stability Oversight Council and as the agency deems consistent with the public interest, may conditionally or unconditionally exempt a swap dealer or major swap participant from the requirements of this subsection and the rules issued under this subsection with regard to any swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—

"(i) IN GENERAL.—The Commission and the Securities and Exchange Commission shall impose both initial and variation margin requirements in accordance with paragraph (2)(B) for nonbank swap dealers and major swap participants on all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j) of this Act. Any such initial and variation

margin requirements shall be as strict as or stricter than the margin requirements prescribed under paragraph (4)(A).

"(ii) EXEMPTION.—The Commission by rule or order, in consultation with the Financial Stability Oversight Council and as the Commission deems consistent with the public interest, may conditionally or unconditionally exempt a nonbank swap dealer or major swap participant from the requirements of this subparagraph and the rules issued under this subparagraph with regard to any swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the

Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(5) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the primary financial regulatory agency for bank swap dealers and major swap participants, the Commission, and the Securities and Exchange Commission may permit the use of noncash collateral, as the agency, the Commission, or the Securities and Exchange Commission determines to be consistent with—

"(A) preserving the financial integrity of markets trading swaps; and

"(B) preserving the stability of the United States financial system.

"(6) REQUESTED MARGIN.—If any party to a swap that is exempt from the margin requirements of paragraph (4)(A)(i) pursuant to the provisions of paragraph (4)(A)(ii) or from the margin requirements of paragraph (4)(B)(i) pursuant to the provisions of paragraph (4)(B)(ii) requests that such swap be margined, then—

"(A) the exemption shall not apply; and

"(B) the counterparty to such swap shall provide the requested margin.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant—

"(A) shall make such reports as are prescribed by rule or regulation regarding the transactions and positions and financial condition of such dealer or participant;

"(B) for which—

"(i) there is a primary financial regulatory agency shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by rule or regulation; and

"(ii) there is not a primary financial regulatory agency shall keep books and records in such form and manner and for such period as may be prescribed by rule or regulation; and

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

"(2) RULES.—Not later than 1 year of the date of the enactment of the Over-the-Counter Deriva-

tives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall, for such period as may be prescribed by rule or regulation, maintain daily trading records of that dealer's or participant's—

"(A) swaps and all related records (including related cash or forward transactions); and

"(B) recorded communications, including the electronic mail, instant messages, and recordings of telephone calls.

"(2) INFORMATION REQUIREMENTS.—The daily trading records required to be maintained under paragraph (1) shall include such information as shall be prescribed by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or

counterparty in such manner and form as to be identifiable with each swap transaction.

"(4) AUDIT TRAIL.—

"(A) MAINTENANCE OF AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(B) PERMISSIBLE COMPLIANCE BY ENTITY OTHER THAN DEALER OR PARTICIPANT.—A registered swap repository may, at the request of a registered swap dealer or major swap participant, satisfy the requirement of subparagraph (A) on behalf of such registered swap dealer or major swap participant.

"(5) RULES.—Not later than 1 year of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as may be prescribed by rule or regulation, including any standards addressing—

"(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

"(B) diligent supervision of its business as a swap dealer;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission shall determine to be necessary or appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission pursuant to paragraph (1) shall—

"(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer,

major swap participant, security-based swap dealer, or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the swap;

"(ii) the source and amount of any fees or other material remuneration that the swap dealer or major swap participant would directly or indirectly expect to receive in connection with the swap; and

"(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap;

"(C) establish a standard of conduct for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

"(D) establish a standard of conduct for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(12) of this Act, to have a reasonable basis

to believe that the counterparty has an independent representative that—

"(i) has sufficient knowledge to evaluate the transaction and risks;

"(ii) is not subject to a statutory disqualification;

"(iii) is independent of the swap dealer or major swap participant;

"(iv) undertakes a duty to act in the best interests of the counterparty it represents;

"(v) makes appropriate disclosures; and

"(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and

"(E) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(3) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the

Securities and Exchange Commission shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

"(2) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant shall, at all times, comply with the following requirements:

"(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission information concerning—

"(A) terms and conditions of its swaps;

"(B) swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to swaps; and

"(D) other information relevant to its trading in swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission upon request.

"(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict of interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap dealer or major swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.

"(k) RULES.—The Commission and the Securities and Exchange Commission shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2010.".

(b) CONFLICT OF INTERESTS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt rules mitigating conflicts of interest in connection with a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant's conduct of business with a derivatives clearing organization, clearing agency, board of trade, or an alternative swap execution facility that clears or trades swaps in which such swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant has a material debt or equity investment.

SEC. 718. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 717) the following:

"SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

"(a) CLEARED SWAPS.—A swap dealer, futures commission merchant, or derivatives clearing organization by

or through which funds or other property provided as initial margin or collateral are held to margin, guarantee, or secure the obligations of a counterparty under a swap to be cleared by or through a derivatives clearing organization shall segregate, maintain, and use the funds or other property provided as initial margin or collateral for the benefit of the counterparty, in accordance with such rules and regulations as the Commission shall prescribe for nonbank swap dealers, futures commission merchants, or derivatives clearing organizations, or the primary financial regulatory agency shall prescribe for bank swap dealers. Any such funds or other property provided as initial margin or collateral shall be treated as customer property under this Act.

''(b) OTHER SWAPS.—At the request of a swap counterparty who provides funds or other property as initial margin or collateral to a swap dealer to margin, guarantee, or secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property provided as initial margin or collateral for the benefit of the counterparty, and maintain the funds or other property in an account that is carried by an independent third-party custodian and designated as a seg-

regated account for the counterparty, in accordance with such rules and regulations as the Commission shall prescribe for nonbank swap dealers, futures commission merchants, or derivatives clearing organizations, or the primary financial regulatory agency shall prescribe for bank swap dealers. Any segregation requested under this subsection shall be made available by a swap dealer to a counterparty on fair and reasonable terms on a non-discriminatory basis. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment, provided, however, that the segregated funds or other property under this subsection may be invested only in such investments as the Commission or the primary financial regulatory agency, as applicable, permits by rule or regulation, and shall not be pledged, re-hypothecated, or otherwise encumbered by a swap dealer.''.

SEC. 719. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

"(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict of interest systems and procedures that—

"(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(2) address such other issues as the Commission determines appropriate.".

SEC. 720. ALTERNATIVE SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

"SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.

"(a) DEFINITION.—For purposes of this section, the term 'alternative swap execution facility' means an electronic trading system with pre-trade and post-trade transparency in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made

by other participants that are open to multiple participants in the system, but which is not an exchange.

"(b) REGISTRATION.—

"(1) IN GENERAL.—No person may operate a facility for the trading of swaps unless the facility is registered as an alternative swap execution facility under this section or as a designated contract market registered under this Act.

"(2) REQUIRED REGISTRATION FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as an alternative swap execution facility.

"(c) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is registered under subsection (b) may trade any swap.

"(d) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the contract market and the alternative swap execution facility, identify whether elec-

tronic trading is taking place on the contract market or the alternative swap execution facility.

"(e) CRITERIA FOR REGISTRATION.—

"(1) IN GENERAL.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission that such facility meets the criteria established under this section.

"(2) DETERRENCE OF ABUSES.—Each alternative swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including—

"(A) means to obtain information necessary to perform the functions required under this section; or

"(B) means to—

"(i) provide market participants with impartial access to the market; and

"(ii) capture information that may be used in establishing whether any violations of this section have occurred.

"(3) TRADING PROCEDURES.—Each alternative swap execution facility shall establish and enforce rules or terms and conditions defining, or specifica-

tions detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

"(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—Each alternative swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

"(f) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

"(1) COMPLIANCE.—

"(A) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles established in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(B) REASONABLE DISCRETION.—Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with the core principles established in this subsection.

"(2) COMPLIANCE WITH RULES.—Each alternative swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

"(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—Each alternative swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—Each alternative swap execution facility shall monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—Each alternative swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, and to eliminate or prevent excessive speculation as described in section 4a(a), an alternative swap execution facility shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

"(B) FOR CERTAIN CONTRACTS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), an alternative swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

"(7) EMERGENCY AUTHORITY.—Each alternative swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission,

where necessary and appropriate, including the authority—

"(A) to liquidate or transfer open positions in any swap; or

"(B) to suspend or curtail trading in a swap.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—Each alternative swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

"(9) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—Each alternative swap execution facility shall—

"(i) maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

"(ii) report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission; and

"(iii) make available to the Securities and Exchange Commission, upon request, all information, including a complete audit trail, relating to transactions in security-based swap agreements (as such term is defined in section 3(a)(76) of the Securities Exchange Act of 1934).

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

"(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, an alternative swap execution facility shall avoid—

"(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading on the swap execution facility.

"(11) CONFLICTS OF INTEREST.—Each alternative swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving any conflicts of interest.

"(12) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each alternative swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer shall perform the following duties:

"(i) Reporting directly to the board or to the senior officer of the facility.

"(ii) Reviewing the compliance of the facility with the core principles established in this subsection.

"(iii) Consulting with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, to resolve any conflicts of interest that may arise.

"(iv) Administering the policies and procedures of the facility required to be established pursuant to this section.

"(v) Ensuring compliance with commodity laws and the rules and regulations issued thereunder, including any rules prescribed by the Commission pursuant to this section.

"(vi) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this clause include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(C) ANNUAL REPORTS REQUIRED.—

"(i) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the alternative swap execution facility with the commodity laws and the policies and procedures of the facility, including the code of ethics and

conflict of interest policies of the facility, in accordance with rules prescribed by the Commission.

"(ii) SUBMISSION.—The compliance report required under clause (i) shall accompany the financial reports of the alternative swap execution facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(g) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an alternative swap execution facility from registration under this section if the Commission finds that such facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, the primary financial regulatory agency, or the appropriate governmental authorities in the organization's home country.

"(h) HARMONIZATION OF RULES.—Not later than 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Securities and Exchange Commission shall jointly prescribe rules governing the regulation of alternative

swap execution facilities under this section and section 3C of the Securities Exchange Act of 1934.''.

SEC. 721. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) IN GENERAL.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a and 7a-3) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) in subsection (a)(1)(A), in the first sentence, by striking ''or 5a'';

(B) in subsection (a)(1)(C)—

(i) in clause (ii)—

(I) by striking '', or register a derivatives transaction execution facility that trades or executes,'';

(II) by striking '', and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery,''; and

(III) by striking ''or the derivatives transaction execution facility,''; and

(ii) in clause (v)—

(I) in subclause (II), by striking ''or derivatives transaction execution facility''; and

(II) in subclause (V), by striking ''or registered derivatives transaction execution facility,''

(C) in subsection (a)(1)(D)—

(i) in clause (i)—

(I) in the matter preceding subclause (I)—

(aa) by striking '', or register a derivatives transaction execution facility that trades or executes,''; and

(bb) by striking '', or registered as a derivatives transaction execution facility for,''; and

(II) in subclause (IV), by striking ''registered derivatives transaction execution facility,'' each place that term appears;

(ii) by amending clause (ii)(I) to read as follows:

"(I) the transaction is conducted on or subject to the rules of a board of trade that has been designated by the Commission as a contract market in such security futures product;";

(iii) in clause (ii)(II), by striking "or registered derivatives transaction execution facility"; and

(iv) in clause (ii)(III), by striking "or registered derivatives transaction execution facility";

(D) in subsection (a)(9)(B)(ii), by striking "or derivatives transaction execution facility", each place that term appears;

(E) in subsection (c)(1), by striking "section 5a of this Act" and all that follows through "5d of this Act" and inserting "section 5b of this Act";

(F) in subsection (c)(2)(B)(iv)—

(i) in subclause (II)(cc), by striking "or a derivatives transaction execution facility"; and

(ii) in subclause (IV)(cc), by striking "or a derivatives transaction execution facility";

(G) in subsection (c)(2)(C)(iii)—

(i) in subclause (II)(cc), by striking ''or a derivatives transaction execution facility''; and

(ii) in subclause (IV)(cc), by striking ''or a derivatives transaction execution facility'';

(H) in subsection (e)(2), by striking ''or a derivatives transaction execution facility,'';

(I) subsection (g), by striking ''section 5a of this Act'' and all that follows through ''5d of this Act'' and inserting ''section 5b of this Act'';

(J) in subsection (h)(7)(B)—

(i) in clause (i), by striking '', or a derivatives transaction execution facility,'';

(ii) in clause (ii), by striking '', or a derivatives transaction execution facility,''; and

(iii) in clause (iv), '', a derivatives transaction execution facility,''; and

(K) in subsection (i)(2), by striking ''section 5a of this Act'' and all that follows through ''5d of this Act'' and inserting ''section 5b of this Act''.

(2) The Commodity Exchange Act (7 U.S.C. 1 et. seq) is amended—

(A) by striking ''or derivatives transaction execution facility'' each place that term appears;

(B) by striking ''or derivatives transaction execution facility,'' each place that term appears;

(C) by striking '', derivatives transaction execution facility,'' each place that term appears;

(D) by striking ''derivatives transaction execution facility'' each place that term appears;

(E) by striking ''or derivatives transaction execution facilities,'' each place that term appears;

(F) by striking ''or derivatives transaction execution facilities'' each place that term appears;

(G) by striking ''or registered derivatives transaction execution facility'' each place that term appears;;

(H) by striking ''or registered derivatives transaction execution facility,'' each place that term appears;; and

(I) by striking ''and registered derivatives transaction execution facility'' each place that term appears.

(3) Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is amended in the heading by striking ''**AND REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES**''.

(4) Section 5(e)(2) of the Commodity Exchange Act (7 U.S.C. 5(e)) is repealed.

(5) Sections 555, 556, 559, and 560 of title 11, United States Code, are each amended by striking '', a derivatives transaction execution facility registered under the Commodity Exchange Act,'' each place that terms appears.

(6) Section 561 of title 11, United States Code, is amended by striking ''or a derivatives transaction execution facility registered under the Commodity Exchange Act''.

(7) Section 3(55)(C)(iii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(55)(C)(iii)(I)) is amended by striking ''or registered derivatives transaction execution facility''.

(8) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

(A) by striking ''that—'' and all that follows through ''(i) has been designated'' and inserting ''that has been designated'';

(B) by striking ''; or'' and inserting ''; and'' and

(C) by striking clause (ii).

(9) Section 5(b)(2)(C)(iii) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)(C)(iii)) is amended by striking '', a derivatives transaction execution facility registered under the Commodity Exchange Act,''.

SEC. 722. DESIGNATED CONTRACT MARKETS.

(a) EXECUTION OF TRANSACTIONS.—Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by amending paragraph (9) to read as follows:

''(9) EXECUTION OF TRANSACTIONS.—

''(A) OPEN MARKET.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade's centralized market.

"(B) PERMISSIBLE TRANSACTIONS.—The rules may authorize, for bona fide business purposes—

"(i) transfer trades or office trades;

"(ii) an exchange of—

"(I) futures in connection with a cash commodity transaction;

"(II) futures for cash commodities; or

"(III) futures for swaps; or

"(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.".

(b) ADDITIONAL PRINCIPLES.—Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding at the end the following:

"(19) FINANCIAL RESOURCES.—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade's

financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.

"(20) SYSTEM SAFEGUARDS.—The board of trade shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade's responsibilities and obligations; and

"(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.".

SEC. 723. MARGIN.

Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended in paragraph (7)(C), by striking ", excepting the setting of levels of margin".

SEC. 724. POSITION LIMITS.

(a) EXCESSIVE SPECULATION.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting "(1)" after "(a)";

(2) in the first sentence, by striking "on electronic trading facilities with respect to a significant price discovery contract" and inserting "swaps that perform or affect a significant price discovery function with respect to regulated markets";

(3) in the second sentence, by—

(A) inserting ", including any group or class of traders," after "held by any person"; and

(B) striking "on an electronic trading facility with respect to a significant price discovery contract," and inserting "swaps that perform or affect a significant price discovery function with respect to regulated markets,"; and

(4) inserting at the end the following:

"(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits

(including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

"(A) contracts listed by designated contract markets;

"(B) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

"(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

"(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination under paragraph (2) whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate the following:

"(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major

price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

"(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

"(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

"(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

"(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

"(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.".

(b) TRACKING POSITION LIMITS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking "or derivatives transaction execution facility or facilities or electronic trading facility" and inserting "or alternative swap execution facility or facilities"; and

(2) in paragraph (2), by striking "or derivatives transaction execution facility or facilities or electronic trading facility" and inserting "or alternative swap execution facility".

SEC. 725. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking ''The board of trade shall have'' and inserting ''Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have''.

(b) Section 5b(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)(A)) is amended by striking ''The applicant shall have'' and inserting ''Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the applicant shall have''.

(c) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended—

(1) in paragraph (1), by striking ''5a(d) and 5b(c)(2)'' and inserting ''5b(c)(2) and 5h(e)''; and

(2) in paragraph (2), by striking ''shall not'' and inserting ''may''.

(d) Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(1)) is amended—

(1) by striking ''(1) IN GENERAL.—Subject to'' and inserting the following:

''(1) IN GENERAL.—

''(A) Subject to''; and

(2) by adding at the end the following:

"(B) Unless section 805(e) of the Payment, Clearing, and Settlement Supervision Act of 2009 applies, the new contract or instrument or clearing of the new contract or instrument, new rule, or new amendment shall become effective, pursuant to the registered entity's certification, 10 business days after the Commission's receipt of the certification (or such shorter period as may be determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that the Commission is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

"(C) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule, or new amendment for up to an additional 90 days from the date of such notification.".

(e) Section 5c(d) of the Commodity Exchange Act (7 U.S.C. 7a–2(d)) is repealed.

SEC. 726. FOREIGN BOARDS OF TRADE.

(a) TECHNICAL AMENDMENT.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended in the third sentence by striking ''No rule or regulation'' and inserting ''Except as provided in paragraphs (1) and (2), no rule or regulation''.

(b) REGISTRATION.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by inserting before ''The Commission'' the following:

''(1) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the elec-

tronic trading and order matching system of the foreign board of trade.

"(2) LINKED CONTRACTS.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

"(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

"(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed

for trading on a registered entity, of any change regarding—

"(I) the information that the foreign board of trade will make publicly available;

"(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

"(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

"(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

"(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or

transaction traded on the foreign board of trade settles; and

"(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

"(3) EXISTING FOREIGN BOARDS OF TRADE.—Paragraphs (1) and (2) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

"(4) PERSONS LOCATED IN THE UNITED STATES.—".

(c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of the Commodity Exchange Act (7 U.S.C. 6(a)) is amended by inserting "or by

subsection (f)'' after ''Unless exempted by the Commission pursuant to subsection (c)''.

(2) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is further amended by adding at the end the following:

''(f) ADDITIONAL EXEMPTION.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).''.

(d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

''(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall

not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.''.

SEC. 727. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

''(A) HYBRIDS.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

''(B) AGREEMENTS BETWEEN CONTRACT PARTICIPANTS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party thereto shall be

entitled to rescind, or recover any payment made with respect to, such agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in section 1a or to be cleared pursuant to section 2(j)(1).''.

SEC. 728. FDICIA AMENDMENTS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421-4422) are hereby repealed.

SEC. 729. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding the following new section after section 4b:

''SEC. 4b–1. PRIMARY ENFORCEMENT AUTHORITY.

''(a) COMMODITY FUTURES TRADING COMMISSION.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of subtitle A of the Over-the-Counter Derivatives Markets Act of 2010 with respect to any person.

''(b) PRIMARY FINANCIAL REGULATORY AGENCY.—The primary financial regulatory agency shall have exclusive authority to enforce the provisions of section 4s(e)

and other prudential requirements of this Act with respect to banks and branches or agencies of foreign banks that are swap dealers or major swap participants.

''(c) REFERRAL.—If the primary financial regulatory agency has cause to believe that a swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a recommendation under subsection (c), the primary financial regulatory agency may initiate an enforcement proceeding as permitted under Federal law.''.

SEC. 730. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by striking ''or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting ''or swap'' before ''if the transaction is used or may be used''.

(d) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended by inserting ''or of any swap,'' before ''or has willfully made''.

(e) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended by inserting ''or of any swap,'' before ''or otherwise is violating''.

(f) Section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting ''or any swap'' after ''commodity for future delivery''.

(g) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting ''or of any swap,'' before ''or to corner''.

(h) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by inserting ''swap repository,'' before ''or futures association''.

(i) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended—

(1) by inserting ''swap repository,'' before ''or registered futures association''; and

(2) by inserting '', or swaps,'' before ''on the basis''.

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

(1) by redesignating paragraphs (6), (7), (8), (9), and (10) as paragraphs (7), (8), (9), (10), and (11), respectively; and

(2) by inserting after paragraph (5), the following:

''(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, or alternative swap execution facility, whether or not it is an insured depository institution, for which there is a primary financial regulatory agency for purposes of the Over-the-Counter Derivatives Markets Act of 2010.''.

SEC. 731. RETAIL COMMODITY TRANSACTIONS.

Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking ''(to the extent provided in section 5a(g), 5b, 5d, or 12(e)(2)(B))'' and inserting ''5b, or 12(e)(2)(B))''; and

(2) in paragraph (2), by adding at the end the following:

''(D) RETAIL COMMODITY TRANSACTIONS.—

''(i) This subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

''(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

''(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

''(ii) Clause (i) shall not apply to—

''(I) an agreement, contract, or transaction described in paragraph (1)

or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

"(II) any security;

"(III) a contract of sale that—

"(aa) results in actual delivery not later than 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

"(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business;

"(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Ex-

1 change Act of 1934 (15 U.S.C.
2 78f(a)); or
3 ''(V) an identified banking prod-
4 uct, as defined in section 402(b) of
5 the Legal Certainty for Bank Prod-
6 ucts Act of 2000 (7 U.S.C. 27(b)).
7 ''(iii) Sections 4(a), 4(b), and 4b shall
8 apply to any agreement, contract or trans-
9 action described in clause (i), that is not
10 excluded from clause (i) by clause (ii), as
11 if the agreement, contract, or transaction
12 were a contract of sale of a commodity for
13 future delivery.
14 ''(iv) This subparagraph shall not be
15 construed to limit any jurisdiction that the
16 Commission may otherwise have under any
17 other provision of this Act over an agree-
18 ment, contract, or transaction that is a
19 contract of sale of a commodity for future
20 delivery.
21 ''(v) This subparagraph shall not be
22 construed to limit any jurisdiction that the
23 Commission or the Securities and Ex-
24 change Commission may otherwise have
25 under any other provisions of this Act with

respect to security futures products and persons effecting transactions in security futures products.

"(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.".

SEC. 732. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4t (as added by section 718) the following:

"SEC. 4u. LARGE SWAP TRADER REPORTING.

"(a) MANDATORY REPORTING OF CERTAIN SWAPS.—

"(1) IN GENERAL.—A person that enters into any swap shall file or cause to be filed with the properly designated officer of the Commission the reports described in paragraph (2).

"(2) REPORTS.—

"(A) SWAP REPORTS.—Each person described in paragraph (1) shall, in accordance with the rules and regulations of the Commission, keep books and records of any swaps or

transactions and positions in any related commodity traded on or subject to the rules of any board of trade.

"(B) CASH OR SPOT TRANSACTIONS.—Each person described in paragraph (1) shall, in accordance with the rules and regulations of the Commission, keep books and records of any cash or spot transactions in, inventories of, and purchase and sale commitments of, any related commodity traded on or subject to the rules of any board of trade, if—

"(i) such person directly or indirectly enters into such swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

"(ii) such person directly or indirectly has or obtains a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission.

"(b) RECORDKEEPING.—Any books and records required to be kept under subsection (a) shall—

"(1) show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe;

"(2) be open at all times to inspection and examination by any representative of the Commission; and

"(3) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in security-based swap agreements (as that term is defined in section 3(a)(76) of the Securities Exchange Act of 1934).

"(c) RULE OF CONSTRUCTION.—For the purpose of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

"(d) CONSIDERATIONS.—In making a determination under this section whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).".

SEC. 733. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency,

the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 734. ANTITRUST.

Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term ''antitrust laws'' has the same meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 751. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in subparagraphs (A) and (B) of paragraph (5), by inserting ''(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)'' after ''securities'' each place that term appears;

(2) in paragraph (10), by inserting ''security-based swap,'' after ''security future,'';

(3) in paragraph (13), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(4) in paragraph (14), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(5) in paragraph (39)—

(A) by striking ''or government securities dealer'' and inserting ''government securities dealer, security-based swap dealer, or major security-based swap participant'' each place that term appears; and

(B) in subparagraph (B)(i)(II), by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(6) by adding at the end the following:

"(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).

"(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer—

"(i) who maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or

"(ii) whose failure to perform under the terms of its security-based swaps would cause significant credit losses to its security-based swap counterparties.

"(B) IMPLEMENTATION.—The Commission shall implement the definition under this paragraph by rule or regulation in a manner that is

prudent for the effective monitoring, management, and oversight of the financial system.

"(68) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under section 1a(34) of the Commodity Exchange Act (7 U.S.C. 1a(34))(without regard to paragraph (34)(B)(xii) of such section), and that is based on—

"(i) an index that is a narrow-based security index, including any interest therein or based on the value thereof;

"(ii) a single security or loan, including any interest therein or based on the value thereof; or

"(iii) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

"(B) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of security-based swap only because such agreement, contract, or transaction references or is based upon a government security.

"(C) MIXED SWAP.—

"(i) IN GENERAL.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on—

"(I) the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than securities or any other financial or economic interest or property described in subparagraph (A) or a narrow-based security index); or

"(II) the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated

with a potential financial, economic, or commercial consequence (other than an event or contingency described in subparagraph (A)(iii)).

"(ii) RULE OF CONSTRUCTION.—A security-based swap shall not constitute, nor shall be construed to constitute, a mixed swap solely because the obligations or rights of 1 party to the swap agreement are defined by reference to 1 or more interest rates or currencies.

"(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under

the master agreement that is a security-based swap pursuant to subparagraph (A).

"(69) SWAP.—The term 'swap' has the same meaning as in section 1a(34) of the Commodity Exchange Act (7 U.S.C. 1a(34)).

"(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means—

"(A) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

"(B) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

"(C) any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-

based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(l).

''(71) SECURITY-BASED SWAP DEALER.—

''(A) IN GENERAL.—The term 'security-based swap dealer' means any person engaged in the business of buying and selling security-based swaps for such person's own account, through a broker or otherwise.

''(B) EXCEPTION.—The term 'security-based swap dealer' does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(73) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(74) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

"(75) SECURITY-BASED SWAP AGREEMENT.—

"(A) IN GENERAL.—For purposes of sections 9, 10, 10B, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933, the term 'security-based swap agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

"(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.

"(76) PRIMARY FINANCIAL REGULATORY AGENCY.—The term 'primary financial regulatory agency' has the same meaning as in section 2 of the Restoring American Financial Stability Act of 2010.".

SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL.—Sections 206B and 206C of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) are hereby repealed.

(b) CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley

Act (15 U.S.C. 78c note) is amended in the material preceding paragraph (1), by striking ''Except as'' and all that follows through ''that—'' and inserting the following: ''Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—''

(c) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended—

(A) by striking subsection (a) and reserving the subsection; and

(B) in subsection (b)—

(i) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears; and

(ii) by striking paragraph (1); and

(iii) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a), by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting

"3(a)(76) of the Securities Exchange Act of 1934"; and

(B) in subsection (d), by striking "206B of the Gramm-Leach-Bliley Act" and inserting "3(a)(76) of the Securities Exchange Act of 1934".

(d) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3A (15 U.S.C. 78c–1)—

(A) by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that term appears;

(B) by striking subsection (a) and reserving the subsection; and

(C) in subsection (b)—

(i) by striking paragraph (1);

(ii) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(iii) in paragraph (2) (as so redesignated), by inserting "or section 9(j) with respect to rulemaking authority to prevent fraudulent, deceptive, or manipulative practices" after "reporting requirements";

(2) in section 9(a) (15 U.S.C. 78i(a)), by striking paragraphs (2) through (5) and inserting the following:

''(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

''(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security or security-based swap or security based-swap agreement with respect to such security to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any

1 or more persons conducted for the purpose of raising or depressing the price of such security.

"(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he or she knew or had reasonable ground to believe was so false or misleading.

"(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security or security-based swap or security-based swap agreement

with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.'';

(3) in section 9(i) (15 U.S.C. 78i(i)), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(4) in section 10 (15 U.S.C. 78j), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(5) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

(A) in subparagraph (A), by striking '', or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(B) in subparagraphs (B) and (C), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(6) in section 15(i) (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455)), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(7) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking ''(as defined in section 206(b) of the Gramm-Leach-Bliley Act)'' and inserting ''or a security-based swap'';

(B) in subsection (a)(3)(B), by inserting ''or security-based swaps'' after ''security-based swap agreements'';

(C) in subsection (b)—

(i) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears; and

(ii) inserting ''or a security-based swap'' after ''security-based swap agreement'' each place that term appears; and

(D) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(8) in section 20 (15 U.S.C. 78t)—

(A) in subsection (d), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (f), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(9) in section 21A (15 U.S.C. 78u–1)—

(A) in subsection (a)(1), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding the following section after section 3A:

''SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

''(a) CLEARING REQUIREMENT.—

''(1) SUBMISSION.—

''(A) IN GENERAL.—Except as provided in paragraph (9), any person who is a party to a security-based swap shall submit such security-

based swap for clearing to a clearing agency registered under section 17A of this Act.

"(B) REQUIRED CONDITIONS.—The rules of a clearing agency described in subparagraph (A) shall—

"(i) prescribe that all security-based swaps with the same terms and conditions accepted for clearing by the clearing agency are fungible and may be offset with each other; and

"(ii) provide for nondiscriminatory clearing of a security-based swap executed on or through the rules of an unaffiliated national securities exchange or an alternative swap execution facility.

"(2) COMMISSION APPROVAL.—

"(A) IN GENERAL.—A clearing agency shall submit to the Commission for prior approval any group, category, type, or class of security-based swaps that the clearing agency seeks to accept for clearing, which submission the Commission shall make available to the public.

"(B) DEADLINE.—The Commission shall take final action on a request submitted pursu-

ant to subparagraph (A) not later than 90 days after submission of the request, unless the clearing agency submitting the request agrees to an extension of the time limitation established under this subparagraph.

"(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with the requirements of section 17A. The Commission shall approve any such request if the Commission does not make such finding.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission shall adopt rules for a clearing agency's submission for approval, pursuant to this paragraph, of any group, category, type, or class of security-based swaps that the clearing agency seeks to accept for clearing.

"(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

"(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the security-based swap, or the group, category, type, or class of security-based swaps, and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or the group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A)—

"(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or the group, category, type, or class of security-based swaps, must be

cleared pursuant to this subsection if the Commission finds that such clearing—

"(I) is consistent with the requirements of section 17A; and

"(II) is otherwise in the public interest, for the protection of investors, and consistent with the purposes of this title;

"(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or the group, category, type, or class of security-based swaps; or

"(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then it shall still be permissible to clear such security-based swap, or the group, category, type, or class of security-based swaps.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency's clearing of a security-based swap, or a group,

category, type, or class of security-based swaps that the Commission has accepted for clearing.

"(4) SECURITY-BASED SWAPS REQUIRED TO BE ACCEPTED FOR CLEARING.—

"(A) RULEMAKING.—Not later than 180 days of the date of enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules to further identify any group, category, type, or class of security-based swaps not submitted for approval under paragraph (2) that the Commission and the Commodity Futures Trading Commission deem should be accepted for clearing. In adopting such rules, the Commission and the Commodity Futures Trading Commission shall take into account the following factors:

"(i) The extent to which any of the terms of the group, category, type, or class of security-based swaps, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.

"(ii) The volume of transactions in the group, category, type, or class of security-based swaps.

"(iii) The extent to which the terms of the group, category, type, or class of security-based swaps are similar to the terms of other agreements, contracts, or transactions that are centrally cleared.

"(iv) Whether any differences in the terms of the group, category, type, or class of security-based swaps, compared to other agreements, contracts, or transactions that are centrally cleared, are of economic significance.

"(v) Whether a clearing agency is prepared to clear the group, category, type, or class of security-based swaps and such clearing agency has in place effective risk management systems.

"(vi) Any other factors the Commission and the Commodity Futures Trading Commission determine to be appropriate.

"(B) OTHER DESIGNATIONS.—At any time after the adoption of the rules required under subparagraph (A), the Commission may sepa-

rately designate a particular security-based swap or class of security-based swaps as subject to the clearing requirement in paragraph (1), taking into account the factors established in clauses (i) through (vi) of subparagraph (A) and the joint rules adopted in such subparagraph.

"(5) PREVENTION OF EVASION.—The Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this section.

"(6) REQUIRED REPORTING.—

"(A) BOTH COUNTERPARTIES.—Both counterparties to a security-based swap that is not cleared by any clearing agency shall report such a security-based swap either to a registered security-based swap repository described in section 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A.

"(B) TIMING.—Counterparties to a security-based swap shall submit the reports required under subparagraph (A) not later than such time period as the Commission may by rule or regulation prescribe.

"(7) TRANSITION RULES.—

"(A) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(i) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission not later than 180 days after the effective date of this section.

"(ii) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission not later than the later of—

"(I) 90 days after such effective date; or

"(II) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

"(B) CLEARING TRANSITION RULES.—

"(i) Security-based swaps entered into before the date of the enactment of this

section are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(i).

"(ii) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subparagraph (A)(ii).

"(8) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of paragraph (1), counterparties shall—

"(i) execute the transaction on an exchange; or

"(ii) execute the transaction on an alternative swap execution facility registered under section 3C or an alternative swap execution facility that is exempt from registration under section 3C(f) of this Act.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no exchange or alternative swap

execution facility makes the swap available to trade.

"(9) EXEMPTIONS.—

"(A) REQUIRED EXEMPTION.—The Commission shall exempt a security-based swap from the requirements of paragraphs (1) and (8), and any rules issued under this subsection, if no clearing agency registered under this Act will accept the security-based swap for clearing.

"(B) PERMISSIVE EXEMPTION.—The Commission by rule or order, in consultation with the Financial Stability Oversight Council and as the Commission deems consistent with the public interest, may conditionally or unconditionally exempt a security-based swap from the requirements of paragraphs (1) and (8), and any rules issued under this subsection, if 1 of the counterparties to the security-based swap—

"(i) is not a security-based swap dealer or major security-based swap participant; and

"(ii) does not meet the eligibility requirements of any clearing agency that clears the security-based swap.

"(C) OPTION TO CLEAR.—If a security-based swap is exempt from the clearing requirements of paragraph (1)—

"(i) the parties to the security-based swap may submit the security-based swap for clearing; and

"(ii) the security-based swap shall be submitted for clearing upon the request of a party to the security-based swap.

"(10) RELATIONSHIP TO DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may clear swaps that are required to be cleared by a person who is registered as a derivatives clearing organization under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(11) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—Any person that is required to be registered as a clearing agency under this title shall register with the Commission regardless of whether that person is also a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(b) REPORTING.—

"(1) TRANSPARENCY.—

"(A) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission and any security-based swap repository designated by the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act.

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on alternative swap execution facilities.

"(C) SHARING OF INFORMATION.—The Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Stability Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authori-

ties), foreign central banks, and foreign ministries.

"(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

"(c) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each clearing agency shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall perform the following duties:

"(A) Reporting directly to the board or to the senior officer of the clearing agency.

"(B) Consulting with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, to resolve any conflicts of interest that may arise.

"(C) Administering the policies and procedures of the clearing agency required to be established pursuant to this section.

"(D) Ensuring compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

"(E) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this subparagraph include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS REQUIRED.—

"(A) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and the policies and procedures of the agency, including the code of ethics and conflict of interest policies of the agency, in accordance with rules prescribed by the Commission.

"(B) SUBMISSION.—The compliance report required under subparagraph (A) shall accompany the financial reports of the clearing agen-

cy that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(d) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section with respect to security-based swaps.

''(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing—

''(1) the clearing and settlement of swaps, as well as persons that are registered as derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

''(2) the clearing and settlement of security-based swaps, as well as persons that are registered as clearing agencies for security-based swaps under this Act.''.

(b) ALTERNATIVE SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et

seq.) is further amended by adding after section 3B the following:

"SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.

"(a) DEFINITION.—For purposes of this section, the term 'alternative swap execution facility' means an electronic trading system with pre-trade and post-trade transparency in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the system, but which is not a designated contract market.

"(b) REGISTRATION.—

"(1) IN GENERAL.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as an alternative swap execution facility under this section or as a securities exchange registered under this Act.

"(2) DUAL REGISTRATION.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Commodity Futures Trading Commission as an alternative swap execution facility.

"(c) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is registered under subsection (b) may trade any security-based swap.

"(d) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the exchange and the alternative swap execution facility, identify whether the electronic trading is taking place on the exchange or the alternative swap execution facility.

"(e) CRITERIA FOR REGISTRATION.—

"(1) IN GENERAL.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission such facility meets the criteria established by this section.

"(2) DETERRENCE OF ABUSES.—Each alternative swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including—

"(A) means to obtain information necessary to perform the functions required under this section; or

"(B) means to—

"(i) provide market participants with impartial access to the market; and

"(ii) capture information that may be used in establishing whether any violations of this section have occurred.

"(3) TRADING PROCEDURES.—Each alternative swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

"(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—Each alternative swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

"(f) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

"(1) COMPLIANCE.—

"(A) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles established in this subsection and any re-

quirement that the Commission may impose by rule or regulation.

"(B) REASONABLE DISCRETION.—Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with the core principles established in this subsection.

"(2) COMPLIANCE WITH RULES.—Each alternative swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the security-based swaps traded on or through the facility and any limitations on access to the facility.

"(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—Each alternative swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—Each alternative swap execution facility shall monitor trading in security-based swaps to prevent manipulation and price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trad-

ing and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—Each alternative swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, an alternative swap execution facility shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability.

"(B) FOR CERTAIN CONTRACTS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 10B, an alternative swap execution facility

shall set its position limitation at a level no higher than the Commission limitation.

"(7) EMERGENCY AUTHORITY.—Each alternative swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—Each alternative swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

"(9) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—Each alternative swap execution facility shall—

"(i) maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

"(ii) report to the Commission all information determined by the Commission to be necessary or appropriate for the

Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission.

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

"(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, an alternative swap execution facility shall avoid—

"(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading on the swap execution facility.

"(11) CONFLICTS OF INTEREST.—Each alternative swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision making process; and

"(B) establish a process for resolving any conflicts of interest.

"(12) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each alternative swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer shall perform the following duties:

"(i) Reporting directly to the board or to the senior officer of the facility.

"(ii) Reviewing the compliance of the facility with the core principles established in this subsection.

"(iii) Consulting with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, to resolve any conflicts of interest that may arise.

"(iv) Administering the policies and procedures of the facility required to be established pursuant to this section.

"(v) Ensuring compliance with securities laws and the rules and regulations issued thereunder, including any rules pre-

scribed by the Commission pursuant to this section.

"(vi) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this clause include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(C) ANNUAL REPORTS REQUIRED.—

"(i) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the alternative swap execution facility with the securities laws and the policies and procedures of the facility, including the code of ethics and conflict of interest policies of the facility, in accordance with rules prescribed by the Commission.

"(ii) SUBMISSION.—The compliance report required under clause (i) shall accompany the financial reports of the alter-

native swap execution facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(g) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an alternative swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, the primary financial regulatory agency, or the appropriate governmental authorities in the organization's home country.

''(h) HARMONIZATION OF RULES.—Not later than 180 days of the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly prescribe rules governing the regulation of alternative swap execution facilities under this section and section 5h of the Commodity Exchange Act.''.

(c) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(l) PROHIBITION.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).".

(d) REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

"(a) REGISTRATION.—It shall be unlawful for any person—

"(1) to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission; and

"(2) to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based

swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—The application required under paragraph (1) shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (c), (d), and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsections (c) and (e), the Commission may provide conditional or unconditional exemptions from rules prescribed under this

section for security-based swap dealers and major security-based swap participants that are subject to substantially similar requirements as brokers or dealers.

''(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants not later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act of 2010.

''(c) DUAL REGISTRATION.—

''(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a swap dealer.

''(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a major swap participant.

"(d) JOINT RULES.—

"(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules for persons that are registered—

"(A) as security-based swap dealers or major security-based swap participants under this Act; and

"(B) as swap dealers or major swap participants under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on security-based swap dealers or major security-based swap participants for which there is a primary financial regulatory agency. This provision shall not be construed as limiting the authority of the Commission and the Commodity Futures Trading Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation margin requirements as prescribed under paragraph (2)(A) to help ensure the safety and soundness as the agency shall by rule or regulation prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation margin requirements as prescribed under paragraph (2)(B) to help ensure the safety and soundness as the Commission and the

Commodity Futures Trading Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

"(2) JOINT RULES.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the primary financial regulatory agency, the Commission, and the Commodity Futures Trading Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is a primary financial regulatory agency.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules imposing cap-

ital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is not a primary financial regulatory agency.

"(3) CAPITAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The capital requirements prescribed under paragraph (2)(A) for bank security-based swap dealers and major security-based swap participants shall contain—

"(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

"(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not centrally cleared, substantially higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The capital requirements prescribed under paragraph (2)(B) for nonbank security-based swap dealers and major security-based swap participants shall be as strict as or stricter than the capital requirements prescribed under paragraph (2)(A).

"(C) RULE OF CONSTRUCTION.—

"(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

"(I) the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

"(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in

accordance with section 4f(b) of the Commodity Exchange Act.

"(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this title or the Commodity Exchange Act.

"(4) MARGIN.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—

"(i) IN GENERAL.—The primary financial regulatory agency for bank security-based swap dealers and major security-based swap participants shall impose both initial and variation margin requirements in accordance with paragraph (2)(A) on all security-based swaps that are not cleared by a clearing agency.

"(ii) EXEMPTION.—The primary financial regulatory agency for bank secu-

rity-based swap dealers and major security-based swap participants, by rule or order, in consultation with the Financial Stability Oversight Council and as the agency deems consistent with the public interest, may conditionally or unconditionally exempt a security-based swap dealer or major security-based swap participant from the requirements of this subsection and the rules issued under this subsection with regard to any security-based swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—

"(i) IN GENERAL.—The Commission and the Securities and Exchange Commission shall impose both initial and variation margin requirements in accordance with paragraph (2)(B) on all security-based swaps that are not cleared by a clearing agency. Any such requirements shall be as strict as or stricter than the margin requirements prescribed under paragraph (4)(A).

"(ii) EXEMPTION.—The Commission by rule or order, in consultation with the Financial Stability Oversight Council and as the Commission deems consistent with the public interest, may conditionally or unconditionally exempt a nonbank security-based swap dealer or major security-based swap participant from the requirements of this subparagraph and the rules issued under this subparagraph with regard to any security-based swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(5) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the primary financial regulatory agency for bank security-based swap dealers and major security-based swap participants, the Commission, or the Commodity Futures Trading Commission may permit the use of noncash collateral, as the agency, the Commission, or the Commodity Futures Trading Commission determines to be consistent with—

"(A) preserving the financial integrity of markets trading security-based swaps; and

"(B) preserving the stability of the United States financial system.

"(6) REQUESTED MARGIN.—If any party to a security-based swap that is exempt from the margin requirements of paragraph (4)(A)(i) pursuant to the provisions of paragraph (4)(A)(ii) or from the margin requirements of paragraph (4)(B)(i) pursuant to the provisions of paragraph (4)(B)(ii) requests that such security-based swap be margined, then—

"(A) the exemption shall not apply; and

"(B) the counterparty to such security-based swap shall provide the requested margin.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

"(A) shall make such reports as are prescribed by rule or regulation regarding the transactions and positions and financial condition of such dealer or participant;

"(B) for which—

"(i) there is a primary financial regulatory agency shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form

and manner and for such period as may be prescribed by rule or regulation; and

"(ii) there is not a primary financial regulatory agency shall keep books and records in such form and manner and for such period as may be prescribed by rule or regulation; and

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

"(2) RULES.—Not later than 1 year of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall, for such period as may be prescribed by rule or regulation, maintain daily trading records of that dealer's or participant's—

"(A) security-based swaps and all related records (including related transactions); and

"(B) recorded communications, including electronic mail, instant messages, and recordings of telephone calls.

"(2) INFORMATION REQUIREMENTS.—The daily trading records required to be maintained under paragraph (1) shall include such information as shall be prescribed by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

"(4) AUDIT TRAIL.—

"(A) MAINTENANCE OF AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(B) PERMISSIBLE COMPLIANCE BY ENTITY OTHER THAN DEALER OR PARTICIPANT.—A registered security-based swap repository may,

at the request of a registered security-based swap dealer or major security-based swap participant, satisfy the requirement of subparagraph (A) on behalf of such registered security-based swap dealer or major security-based swap participant.

"(5) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as may be prescribed by rule or regulation, including any standards addressing—

"(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

"(B) diligent supervision of its business as a security-based swap dealer;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission shall determine to be necessary or appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission pursuant to paragraph (1) shall—

"(A) establish a standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the security-based swap;

"(ii) the source and amount of any fees or other material remuneration that the security-based swap dealer or major security-based swap participant would directly or indirectly expect to receive in connection with the security-based swap; and

"(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

"(C) establish a standard of conduct for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

"(D) establish a standard of conduct for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)), to have a reasonable basis to believe that the counterparty has an independent representative that—

"(i) has sufficient knowledge to evaluate the transaction and risks;

"(ii) is not subject to a statutory disqualification;

"(iii) is independent of the security-based swap dealer or major security-based swap participant;

"(iv) undertakes a duty to act in the best interests of the counterparty it represents;

"(v) makes appropriate disclosures; and

"(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and

"(E) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(3) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall

jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

"(2) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2010, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

"(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission information concerning—

"(A) terms and conditions of its security-based swaps;

"(B) security-based swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to security-based swaps; and

"(D) other information relevant to its trading in security-based swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission upon request.

"(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict of interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a security-based swap dealer or major security-based swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.

"(k) RULES.—The Commission and the Commodity Futures Trading Commission shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2010.

"(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

"(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

"(1) PRIMARY ENFORCEMENT AUTHORITY.—

"(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subsection (b), the Commission shall have primary authority to

enforce the provisions of subtitle B of the Over-the-Counter Derivatives Markets Act of 2010 with respect to any person.

"(B) PRIMARY FINANCIAL REGULATORY AGENCY.—The primary financial regulatory agency for bank security-based swap dealers and major security-based swap participants shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks, that are security-based swap dealers or major security-based swap participants.

"(C) REFERRAL.—If the primary financial regulatory agency for bank security-based swap dealers and major security-based swap participants has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The rec-

ommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(D) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a recommendation under subparagraph (C), the primary financial regulatory agency for bank security-based swap dealers and major security-based swap participants may initiate an enforcement proceeding as permitted under Federal law.

"(2) ENFORCEMENT ACTIONS.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or rejection is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap

participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

"(A) has committed or omitted any act, or is subject to an order or finding, described in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) not later than 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, described in subparagraph (G) of such paragraph (4).

"(3) PERSONNEL ENFORCEMENT ACTIONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

"(A) has committed or omitted any act, or is subject to an order or finding, described in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such para-

graph (4) not later than 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, described in subparagraph (G) of such paragraph (4).

"(4) NO VIOLATIONS OF ORDERS.—It shall be unlawful—

"(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

"(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Com-

mission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.''.

(e) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

''(1) any transaction in connection with any security whereby any party to such transaction acquires—

''(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

''(B) any security futures product on the security; or

''(C) any security-based swap involving the security or the issuer of the security;

"(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any—

"(A) such put, call, straddle, option, or privilege;

"(B) such security futures product; or

"(C) such security-based swap; or

"(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any—

"(A) such put, call, straddle, option, or privilege;

"(B) such security futures product with relation to such security; or

"(C) any security-based swap involving such security or the issuer of such security.".

(f) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY-BASED SWAP AGREEMENTS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

"(j) PROHIBITION.—It shall be unlawful for any person, directly or indirectly, by the use of any means or in-

strumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap or any security-based swap agreement, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.''.

(g) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following new section:

''SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

''(a) AGGREGATE POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection

of investors, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions that may be held by any person or persons across security-based swaps that perform or affect a significant price discovery function with respect to regulated markets.

"(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

"(c) SELF-REGULATORY ORGANIZATION RULES.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

"(1) to adopt rules regarding the size of positions in any security-based swap and any security on which such security-based swap is based that may be held by—

"(A) any member of such self-regulatory organization; or

"(B) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap or other security; and

"(2) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (a).

"(d) LARGE SECURITY-BASED SWAP TRADER REPORTING.—

"(1) IN GENERAL.—A person that enters into any security-based swap shall file or cause to be filed with the properly designated officer of the Commission the reports described in paragraph (2).

"(2) REPORTS.—

"(A) SECURITY-BASED SWAP REPORTS.—Each person described in paragraph (1) shall, in accordance with the rules and regulations of the Commission, keep books and records of any security-based swaps or transactions and positions in any related security traded on or subject to the rules of any national securities exchange.

"(B) CASH OR SPOT TRANSACTIONS.—Each person described in paragraph (1) shall, in accordance with the rules and regulations of

the Commission, keep books and records of any cash or spot transactions in, inventories of, and purchase and sale commitments of, any related security traded on or subject to the rules of any national securities exchange, if—

"(i) such person directly or indirectly enters into such security-based swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

"(ii) such person directly or indirectly has or obtains a position in such security-based swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission.

"(3) RECORDKEEPING.—The books and records required to be kept under paragraph (2) shall—

"(A) show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe; and

"(B) be open at all times to inspection and examination by any representative of the Commission.

"(4) RULE OF CONSTRUCTION.—For the purpose of this subsection, the security-based swaps,

and securities transactions and positions of any person shall include such security-based swaps, transactions and positions of any persons directly or indirectly controlled by such person.''.

(h) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting requirement described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) clearing agencies pursuant to section 3B;

"(B) security-based swap repositories pursuant to subsection (n); and

"(C) reports received by the Commission pursuant to section 13A.

"(n) SECURITY-BASED SWAP REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—

"(A) IN GENERAL.—A person may register as a security-based swap repository by filing with the Commission an application in such form as the Commission, by rule, may prescribe, containing the rules of the security-based swap repository and such other information and documentation as the Commission, by rule, may prescribe as necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of this section.

"(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

"(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

"(3) DUTIES.—A security-based swap repository shall—

"(A) accept data prescribed by the Commission for each security-based swap under paragraph (2);

"(B) maintain such data in such form and manner and for such period as may be required by the Commission;

"(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined

by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

"(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Stability Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

"(5) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2010, the

Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1 et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

"(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission or the appropriate governmental authorities in the organization's home country.".

(i) RECORDKEEPING BY SECURITY-BASED SWAP REPOSITORIES.—Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by inserting "registered security-based swap repository," after "registered securities information processor,".

SEC. 754. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended by adding after section 3C (as added by section 753) the following:

"SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

"(a) CLEARED SECURITY-BASED SWAPS.—A security-based swap dealer or clearing agency by or through which funds or other property provided as initial margin or collateral are held to margin, guarantee, or secure the obligations of a counterparty under a security-based swap to be cleared by or through a clearing agency shall segregate, maintain, and use the funds or other property provided as initial margin or collateral for the benefit of the counterparty, in accordance with such rules and regulations as the Commission shall prescribe for nonbank security-based swap dealers or clearing agencies, or the primary financial regulatory agency shall prescribe for bank security-based swap dealers. Any such funds or other property provided as initial margin or collateral shall be treated as customer property under this Act.

"(b) OTHER SECURITY-BASED SWAPS.—At the request of a security-based swap counterparty who provides funds or other property as initial margin or collateral to a security-based swap dealer to margin, guarantee, or se-

cure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a clearing agency, the security-based swap dealer shall segregate the funds or other property provided as initial margin or collateral for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission shall prescribe for nonbank security-based swap dealers or clearing agencies, or the primary financial regulatory agency shall prescribe for bank security-based swap dealers. Any segregation requested under this subsection shall be made available by a security-based swap dealer to a counterparty on fair and reasonable terms on a non-discriminatory basis. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment, provided, however, that the segregated funds or other property under this subsection may be invested only in such investments as the Commission or the primary financial regulatory agency, as applicable, permits by rule or regulation,

and shall not be pledged, re-hypothecated, or otherwise encumbered by a security-based swap dealer.''.

SEC. 755. REPORTING AND RECORDKEEPING.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following section:

''SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

''(a) IN GENERAL.—Any person who enters into a security-based swap shall satisfy the reporting requirements under subsection (b), if such person—

''(1) did not clear the security-based swap in accordance with section 3B; and

''(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

"(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Stability Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under section 13(n).".

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and" after "Alaska Native Claims Settlement Act,".

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by

inserting ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule'' after ''subsection (d)(1) of this section''.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended—

(1) in paragraph (1)—

(A) by inserting ''(A)'' after ''accounts holding''; and

(B) by inserting ''or (B) security-based derivative instruments or other derivative securities that the Commission may determine by rule, having such values as the Commission, by rule, may determine'' after ''less than $10,000,000) as the Commission, by rule, may determine.''; and

(2) in paragraph (3), by striking ''section 13(d)(1) of this title'' and inserting ''subsection (d)(1) of this section and of security-based swaps or other derivative instrument that the Commission may determine by rule,''.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(2) in subparagraph (F), by inserting '', or security-based swap dealer, or a major security-based swap participant'' after ''or dealer''.

(e) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by inserting ''or security-based swaps'' after ''security futures products''.

SEC. 756. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) ADDITIONAL RIGHTS AND REMEDIES; RECOVERY OF ACTUAL DAMAGES; STATE SECURITIES COMMISSIONS.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity, but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of his actual damages on

account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law that prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

"(1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

"(2) any security-based swap between eligible contract participants; or

"(3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.''.

SEC. 757. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting ''security-based swap,'' after ''security future,'';

(2) in paragraph (3), by adding at the end the following: ''Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities,''; and

(3) by adding at the end the following:

''(17) The terms 'swap' and 'security-based swap' have the same meanings as provided in sections 1a(34) of the Commodity Exchange Act (7 U.S.C. 1a(34)) and section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78(c)(a)(68)), respectively.

"(18) The terms 'purchase' or 'sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.".

(b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

"(d) MANDATORY REGISTRATION: PROHIBITION ON SALE.—Notwithstanding the provisions of section 3 or section 4, except as the Commission shall otherwise exempt by rule or regulation pursuant to this title, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(13)).".

SEC. 758. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 759. JURISDICTION.

Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended

(1) in subsection (a)(1), by inserting ''and (c) and subject to subsection (d)'' after ''Except as provided in subsection (b)''; and

(2) by adding at the end the following:

''(c) LIMITATION ON AUTHORITY.—The Commission shall not have the authority to grant exemptions from the security-based swap provisions of this Act or the Over-the-Counter Derivatives Markets Act of 2010, except as expressly authorized under the provisions of that Act.

''(d) EXPRESS AUTHORITY.—The Commission is expressly authorized to use any authority granted to the Commission under subsection (a) to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of this title, or of any rule or regulation thereunder, that applies to such person, security, or transaction solely be-

cause a 'security-based swap' is a 'security' under section 3(a).''.

Subtitle C—Other Provisions

SEC. 761. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of swaps and security-based swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Stability Oversight Council, and the Treasury Department—

(1) shall, both individually and collectively, consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of such swaps; and

(2) may, both individually and collectively, agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.

SEC. 762. INTERAGENCY COOPERATION.

(a) JOINT ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Securities and Exchange Commission and the Commodity Futures Trading Commission, shall establish a joint advisory committee or work through an established joint advi-

sory committee to consider and develop solutions to emerging and ongoing issues of common interest relating to the trading and regulation of products regulated by the Securities and Exchange Commission and the Commodity Futures Trading Commission, including securities, commodity futures, swaps and securities-based swaps.

(2) MEMBERSHIP.—The joint advisory committee shall—

(A) be fairly balanced in terms of the points of view represented and the functions to be performed by the committee;

(B) include at least 1 representative from each of the Securities and Exchange Commission and the Commodity Futures Trading Commission; and

(C) include other individuals with expertise in commodities and securities trading, commodities and securities law, investor protection, consumer protection, or international markets.

(3) REPORTING.—Not later than 6 months after the date of enactment of this title, and every 6 months thereafter, the joint advisory committee shall report its findings and recommendations to the—

(A) Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) Committee on Financial Services of the House of Representatives;

(C) Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(D) Committee on Agriculture of the House of Representatives.

(4) JOINT FUNDING.—Notwithstanding any other provision of law, amounts made available to the Commodity Futures Trading Commission and the Securities and Exchange Commission for the current or subsequent fiscal years by a current or future appropriations Act may be used for the interagency funding of the joint advisory committee sponsored by such agencies pursuant to this section.

(b) JOINT ENFORCEMENT TASK FORCE.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly establish an interagency group to be known as the Joint Enforcement Task Force in order to improve market oversight, enhance enforcement, and relieve duplicative regulatory burdens. The Task Force shall consist of staff from each agency to coordinate and develop processes for conducting joint investigations in response to events that affect both the com-

modities and securities markets. The Task Force shall prepare and offer training programs for the staffs of both agencies, develop enforcement and examination standards and protocols, and coordinate information sharing.

(c) TRADING AND MARKETS FELLOWSHIP PROGRAM.—

(1) IN GENERAL.—The Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System shall jointly establish a Trading and Markets Fellowship Program in order to enhance staff understanding about the interactions between financial markets and the economy.

(2) SELECTION OF FELLOWS.—On January 1 of each calendar year, the Chairmen of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System shall jointly announce the selection of 3 employees from their respective agencies to participate in the fellowship program established under paragraph (1), for a total annual class size of 9 fellows per calendar year.

(3) JOINT TRAINING CURRICULUM.—

(A) DEVELOPMENT.—The Securities and Exchange Commission, the Commodity Futures

Trading Commission, and the Board of Governors of the Federal Reserve System shall jointly develop a 1-month long training curriculum that focuses on the mission and activities of each agency, enforcement matters, and economic and financial analysis.

(B) FACULTY.—The training curriculum developed under subparagraph (A) shall be taught by senior officials from each agency, experienced academics, and professionals from commodities and securities trading.

(C) MANDATORY ATTENDANCE.—Each of the 9 fellows selected under paragraph (2) shall complete the training curriculum developed under this paragraph.

(4) CROSS-AGENCY ROTATION.—

(A) IN GENERAL.—Following the completion of the 1-month training curriculum developed under paragraph (3), each fellow shall be assigned to serve at each participating agency for 3 months each.

(B) SUBMISSION OF PAPER.—Upon completion of the Trading and Markets Fellowship Program, each fellow shall submit a written paper to the Chairmen of the Securities and

Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System—

(i) summarizing his or her observations from participating in the program; and

(ii) providing recommendations for enhancing the contribution of each agency to the stable functioning of the financial markets and economy of the nation.

(d) CROSS-AGENCY ENFORCEMENT.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly establish a cross-agency training and education curriculum for enforcement personnel in order to improve the ability of employees at both agencies to understand and respond to matters where both agencies have enforcement jurisdiction and interest.

(e) DETAILING OF STAFF.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly establish a program for the regular detailing of staff between such agencies.

SEC. 763. STUDY AND REPORT ON IMPLEMENTATION.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of—

(1) how the Commodity Futures Trading Commission and the Securities and Exchange Commission have implemented this title and the amendments made by this title;

(2) the extent to which jurisdictional disputes have created challenges in the process of implementing this title and the amendments made by this title;

(3) the benefits and drawbacks of harmonizing laws implemented by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and merging those agencies;

(4) the benefits and feasibility of—

(A) holding of both futures and securities products in the same account to allow cross-netting; and

(B) creating the ability to cross-net across securities and futures accounts; and

(5) the benefits and feasibility of imposing a uniform fiduciary duty on financial intermediaries who provide similar investment advisory services.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this title, the Comptroller General shall submit a report on the results of the study required by this section to Congress, the Commodity Fu-

tures Trading Commission, and the Securities and Exchange Commission.

SEC. 764. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall transmit to Congress recommendations on legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing swaps and security-based swaps through a derivatives clearing organization or clearing agency, including—

(A) customer rights to cover margin deposits or custodial property held at or through an insolvent swap clearinghouse or clearing participant; and

(B) the enforceability or clearing rules relating to the portability of customer swap positions (and associated margins) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or

dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodities futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

SEC. 765. EFFECTIVE DATE.

Except as specifically provided in the amendments made by this title, this title, and the amendments made by this title, shall take effect 180 days after the date of enactment of this Act.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Payment, Clearing, and Settlement Supervision Act of 2010''.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrange-

ments for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors to prescribe uniform standards for the—

(A) management of risks by systemically important financial market utilities; and

(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DESIGNATED ACTIVITY.—The term ''designated activity'' means a payment, clearing, or set-

tlement activity that the Council has designated as systemically important under section 804.

(2) DESIGNATED FINANCIAL MARKET UTILITY.—The term ''designated financial market utility'' means a financial market utility that the Council has designated as systemically important under section 804.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' means—

(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(D) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(E) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(F) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(G) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(H) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(I) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(4) FINANCIAL MARKET UTILITY.—The term ''financial market utility'' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(5) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term ''financial transaction'' includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swaps;

(vii) security-based swaps;

(viii) swap agreements;

(ix) security-based swap agreements;

(x) foreign exchange contracts;

(xi) financial derivatives contracts; and

(xii) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;

(ii) the netting of transactions;

(iii) provision and maintenance of trade, contract, or instrument information;

(iv) the management of risks and activities associated with continuing financial transactions;

(v) transmittal and storage of payment instructions;

(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Council may determine.

(6) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term ''Supervisory Agency'' means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, including—

(i) the Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission;

(ii) the Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission;

(iii) the appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act; and

(iv) the Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the ju-

risdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

(7) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms ''systemically important'' and ''systemic importance'' mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with

other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed by the Council under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to dem-

onstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not less than ⅔ of all members then serving, including an affirmative vote by the Chairperson, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(3), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing

not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(1) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

(2) the conduct of designated activities by financial institutions.

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that the Board determines are necessary to achieve the objectives and principles in subsection (b).

(d) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of en-

gagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(e) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed by the Board of Governors for a designated activity shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board of Governors.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, sub-

ject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide 60-days' advance notice to its Supervisory Agency and the Board of Governors of any proposed change to its rules, procedures, or operations that could, as defined in rules of the Board of Governors, ma-

terially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE BOARD OF GOVERNORS.—The Board of Governors shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board of Governors may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's pay-

ment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency or the Board of Governors shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board of Governors or the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board of Governors receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board of Governors receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board of Governors may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board of Governors providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (D) and (F).

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board of Governors, or the

date the Supervisory Agency or the Board of Governors receives any further information it requested, if the Supervisory Agency or the Board of Governors notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board of Governors.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency and the

Board of Governors, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board of Governors may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board of Governors hereunder.

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) The designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed by the Board of Governors under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this section, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the recommendation of the Board of Governors, the Board of Governors may dispute the matter by referring the recommendation to the Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Council is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board of Governors may, upon a vote of its members—

(A) exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency; and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the

same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board of Governors shall provide written notice to the designated financial market utility's Supervisory Agency containing a detailed analysis of the action of the Board of Governors, with supporting documentation included.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The primary financial regulatory agency is authorized to examine a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed by the Board of Governors under this title.

(b) ENFORCEMENT.—For purposes of enforcing the provisions of this section, and the rules and orders prescribed by the Board of Governors under this section, a financial institution subject to the standards prescribed by the Board of Governors for a designated activity shall be subject to, and the primary financial regulatory agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the primary financial reg-

ulatory agency was the appropriate Federal banking agency for such insured depository institution.

(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the primary financial regulatory agencies to ensure that the rules and orders prescribed by the Board of Governors under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed by the Board of Governors under this title.

(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will con-

duct the examination under such terms and conditions to which the Board of Governors and the primary financial regulatory agency mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to enforce this title or the rules or orders prescribed by the Board of Governors under this title against a financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board of Governors under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same

manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed by the Board of Governors under this title against any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in

paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the primary financial regulatory agency to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the primary financial regulatory agency within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's non-

compliance with this title or the rules or orders prescribed by the Board of Governors under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the primary financial regulatory agency a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the primary financial

regulatory agency take 1 or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the primary financial regulatory agency of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors notifying the primary financial regulatory agency of the Board's enforcement action.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1),

the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial

institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors and the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS DESIGNATED ACTIVITIES.—The Board of Governors and the Council may require 1 or more financial institutions subject to the standards prescribed by the Board of Governors for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors and

the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board of Governors with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board of Governors under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors and the Council shall coordinate with the Supervisory Agency for a financial market utility or the primary financial regulatory agency for a financial institution to determine if the information is available from or may be obtained by

the agency in the form, format, or detail required by the Board of Governors and the Council.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the primary financial regulatory agency, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the primary financial regulatory agency in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors,

the Council, the primary financial regulatory agency, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to other persons it deems appropriate, including the Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion

thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors or the Council under this section and any materials prepared by the Board of Governors or the Council regarding its assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the authorities and duties granted to the Board of Governors or the Council, respectively, and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any primary financial regulatory agency, any

Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

Subtitle A—Increasing Investor Protection

SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

"SEC. 39. INVESTOR ADVISORY COMMITTEE.

"(a) ESTABLISHMENT AND PURPOSE.—

"(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

"(2) PURPOSE.—The Committee shall—

"(A) advise and consult with the Commission on—

"(i) regulatory priorities of the Commission;

"(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

"(iii) initiatives to protect investor interest; and

"(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

"(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The members of the Committee shall be—

"(A) the Investor Advocate;

"(B) a representative of State securities commissions;

"(C) a representative of the interests of senior citizens; and

"(D) not fewer than 12, and not more than 22, members appointed by the Commission, from among individuals who—

"(i) represent the interests of individual equity and debt investors;

"(ii) represent the interests of institutional investors, including the interests of pension funds;

"(iii) are knowledgeable about investment issues and decisions; and

"(iv) have reputations of integrity.

"(2) TERM.—Each member of the Commission appointed under paragraph (1)(B) shall serve for a term of 4 years.

"(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

"(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

"(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

"(A) a chairman, who may not be employed by an issuer;

"(B) a vice chairman, who may not be employed by an issuer;

"(C) a secretary; and

"(D) an assistant secretary.

"(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

"(d) MEETINGS.—

"(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

"(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

"(B) from time to time, at the call of the Commission.

"(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

"(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

"(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

"(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

"(g) REVIEW BY COMMISSION.—The Commission shall—

"(1) review the findings and recommendations of the Committee; and

"(2) each time the Committee submits a finding or recommendation to the Commission, issue a public statement—

"(A) assessing the finding or recommendation of the Committee; and

"(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

"(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

"(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.".

SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMISSION TO ENGAGE IN INVESTOR TESTING.

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following:

"(e) EVALUATION OF RULES OR PROGRAMS.—For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities

Exchange Act of 1934 (15 U.S.C.78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

"(1) gather information from and communicate with investors or other members of the public;

"(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

"(3) consult with academics and consultants, as necessary to carry out this subsection.".

SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) DEFINITIONS.—In this section—

(1) the term "FINRA" means the Financial Industry Regulatory Authority; and

(2) the term "retail customer" means an individual customer of a broker, dealer, investment adviser, person associated with a broker or dealer, or a person associated with an investment adviser.

(b) IN GENERAL.—The Commission shall conduct a study to evaluate—

(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, invest-

ment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and FINRA, and other Federal and State legal or regulatory standards; and

(2) whether there are legal or regulatory gaps or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider—

(1) the regulatory, examination, and enforcement resources devoted to, and activities of, the Commission and FINRA to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing

personalized investment advice and recommendations about securities to retail customers, including—

(A) the frequency of examinations of brokers, dealers, and investment advisers; and

(B) the length of time of the examinations;

(2) the substantive differences, compared and contrasted in detail, in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers, including the differences in the amount of resources devoted to the regulation and examination of brokers, dealers, and investment advisers, by the Commission and FINRA;

(3) the specific instances in which—

(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

(B) the regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

(4) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

(5) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers; and

(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(6) the potential impact of—

(A) imposing on investment advisers the standard of care applied by the Commission and FINRA under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for providing recommendations about securities to retail customers of brokers and dealers and other Com-

mission and FINRA requirements applicable to brokers and dealers; and

(B) authorizing the Commission to designate 1 or more self-regulatory organizations to augment the efforts of the Commission to oversee investment advisers;

(7) the potential impact of eliminating the broker and dealer exclusion from the definition of ''investment adviser'' under section 202(a)(11)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(C)), in terms of—

(A) the potential benefits or harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and recommendations about securities to retail customers or the availability of such advice and recommendations;

(B) the number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and the additional requirements to which brokers, dealers, and persons associated with

brokers and dealers would become subject, including—

(i) any potential additional associated person licensing, registration, and examination requirements; and

(ii) the additional costs, if any, to the additional entities and individuals; and

(C) the impact on Commission resources to—

(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(8) the ability of investors to understand the differences in terms of regulatory oversight and examinations between brokers, dealers, and investment advisers;

(9) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the vary-

ing scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

(10) any potential benefits or harm to retail customers that could result from any potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers, including any potential impact on—

(A) protection from fraud;

(B) access to personalized investment advice, and recommendations about securities to retail customers; or

(C) the availability of such advice and recommendations;

(11) the additional costs and expenses to retail customers and to brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated

with investment advisers relating to their obligations to retail customers; and

(12) any other consideration that the Commission deems necessary and appropriate to effectively execute the study required under subsection (b).

(d) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (b) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (e), to make such findings, conclusions, and policy recommendations; and

(B) an analysis of—

(i) whether any identified legal or regulatory gaps or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers can be addressed by rule; and

(ii) whether, and the extent to which, the Commission would require additional statutory authority to address such gaps or overlap.

(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

(f) RULEMAKING.—

(1) IN GENERAL.—If the study required under subsection (b) identifies any gaps or overlap in the legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized

investment advice about securities to such retail customers, the Commission, not later than 2 years after the date of enactment of this Act, shall—

(A) commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers, to address such regulatory gaps and overlap that can be addressed by rule, using its authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.); and

(B) consider and take into account the findings, conclusions, and recommendations of the study required under this section.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the rulemaking authority of the Commission under any other provision of Federal law.

SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(g) OFFICE OF THE INVESTOR ADVOCATE.—

"(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the In-

vestor Advocate (in this subsection referred to as the 'Office').

"(2) INVESTOR ADVOCATE.—

"(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

"(i) report directly to the Chairman; and

"(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

"(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for a Senior Executive Service position within the Commission.

"(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

"(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

"(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

"(3) STAFF OF OFFICE.—The Investor Advocate may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

"(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

"(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

"(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

"(C) identify problems that investors have with financial service providers and investment products;

"(D) analyze the potential impact on investors of—

"(i) proposed regulations of the Commission; and

"(ii) proposed rules of self-regulatory organizations registered under this title; and

"(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

"(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

"(6) ANNUAL REPORTS.—

"(A) REPORT ON OBJECTIVES.—

"(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of

the Investor Advocate for the following fiscal year.

"(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

"(B) REPORT ON ACTIVITIES.—

"(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

"(ii) CONTENTS.—Each report required under clause (i) shall include—

"(I) appropriate statistical information and full and substantive analysis;

"(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness

of the Commission and self-regulatory organizations to investor concerns;

"(III) a summary of the most serious problems encountered by investors during the reporting period;

"(IV) an inventory of the items described in subclauses (III) that includes—

"(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

"(bb) the length of time that each item has remained on such inventory; and

"(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

"(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

"(VI) any other information, as determined appropriate by the Investor Advocate.

"(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

"(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

"(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.".

SEC. 915. STREAMLINING OF FILING PROCEDURES FOR SELF-REGULATORY ORGANIZATIONS.

(a) FILING PROCEDURES.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by striking paragraph (2) (including the undesig-

nated matter immediately following subparagraph (B)) and inserting the following:

"(2) APPROVAL PROCESS.—

"(A) APPROVAL PROCESS ESTABLISHED.—

"(i) IN GENERAL.—Except as provided in clause (ii), not later than 45 days after the date of publication of a proposed rule change under paragraph (1), the Commission shall—

"(I) by order, approve the proposed rule change; or

"(II) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

"(ii) EXTENSION OF TIME PERIOD.—The Commission may extend the period established under clause (i) by not more than an additional 45 days, if—

"(I) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

"(B) PROCEEDINGS.—

"(i) NOTICE AND HEARING.—If the Commission does not approve a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

"(I) notice of the grounds for disapproval under consideration; and

"(II) opportunity for hearing, to be concluded not later than 180 days of the date of publication of notice of the filing of the proposed rule change.

"(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

"(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

"(II) EXTENSION OF TIME PERIOD.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

"(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

"(C) STANDARDS FOR APPROVAL AND DISAPPROVAL.—

"(i) APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.

"(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of

a self-regulatory organization if it does not make a finding described in clause (i).

"(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

"(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

"(i) the Commission does not approve the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

"(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).

"(E) PUBLICATION DATE BASED ON WEBSITE PUBLISHING.—For purposes of this

paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the date of publication of notice of the filing of such proposed rule change shall be deemed to be the date on which such website publication is made.''.

(b) CLARIFICATION OF FILING DATE.—

(1) RULE OF CONSTRUCTION.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

''(10) RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

''(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed to be the date on which the Commission receives the proposed rule change.

''(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not

later than 7 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.''.

(2) PUBLICATION.—Section 19(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(1)) is amended by striking ''upon'' and inserting ''as soon as practicable after the date of''.

(c) EFFECTIVE DATE OF PROPOSED RULES.—Section 19(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking ''may take effect'' and inserting ''shall take effect''; and

(B) by inserting '' on any person, whether or not the person is a member of the self-regulatory organization'' after ''charge imposed by the self-regulatory organization''; and

(2) in subparagraph (C)—

(A) by amending the second sentence to read as follows: ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the

provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.'';

(B) by inserting after the second sentence the following: ''If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved.''; and

(C) in the third sentence, by striking ''the preceding sentence'' and inserting ''this subparagraph''.

(d) CONFORMING CHANGE.—Section 19(b)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(4)(D)) is amended to read as follows:

''(D)(i) The Commission shall order the temporary suspension of any change in the rules of a clearing agency made by a proposed rule change that has taken effect under paragraph (3), if the appropriate regulatory agency

for the clearing agency notifies the Commission not later than 30 days after the date on which the proposed rule change was filed of—

"(I) the determination by the appropriate regulatory agency that the rules of such clearing agency, as so changed, may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible; and

"(II) the reasons for the determination described in subclause (I).

"(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.".

SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG INVESTORS.

(a) IN GENERAL.—The Commission shall conduct a study to identify—

(1) the existing level of financial literacy among retail investors, including subgroups of investors identified by the Commission;

(2) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;

(3) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of open-end companies, as that term is defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that are registered under section 8 of that Act;

(4) methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of open-end companies described in paragraph (3);

(5) the most effective existing private and public efforts to educate investors; and

(6) in consultation with the Financial Literacy and Education Commission, a strategy (including, to the extent practicable, measurable goals and objectives) to increase the financial literacy of investors

in order to bring about a positive change in investor behavior.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers; and

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can

make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT PRODUCTS AND SERVICES.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

"(k) DISCLOSURES TO RETAIL INVESTORS.—

"(1) IN GENERAL.—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

"(2) CONSIDERATIONS.—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.".

Subtitle B—Increasing Regulatory Enforcement and Remedies

SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 918, is amended by adding at the end the following:

"(l) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—The Commission may conduct a rulemaking to reaffirm or prohibit, or impose or not impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between them and such broker, dealer, or municipal securities dealer that arises under the securities laws or the rules of a self-regulatory organization, if the Commission finds that such reaffirmation, prohibition, imposition of conditions or limitations, or other action is in the public interest and for the protection of investors.".

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:

"(f) AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.—The Commission may conduct rulemaking to reaffirm or prohibit, or impose or not impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any dispute between them and such broker, dealer, or municipal securities dealer that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization, if the Commission finds that such reaffirmation, prohibition, imposition of conditions or limitations, or other action is in the public interest and for the protection of investors.".

SEC. 922. WHISTLEBLOWER PROTECTION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21E the following:

"SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

"(a) DEFINITIONS.—In this section the following definition shall apply:

"(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term 'covered judicial or administrative action' means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000.

"(2) FUND.—The term 'Fund' means the Securities and Exchange Commission Investor Protection Fund.

"(3) ORIGINAL INFORMATION.—The term 'original information' means information that—

"(A) is derived from the independent knowledge or analysis of a whistleblower;

"(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

"(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

"(4) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means—

"(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

"(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

"(5) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

"(6) WHISTLEBLOWER.—The term 'whistleblower' means any individual, or 2 or more individuals acting jointly, that provides information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

"(b) AWARDS.—

"(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

"(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

"(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

"(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

"(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

"(1) DETERMINATION OF AMOUNT OF AWARD.—

"(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

"(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission shall take into account—

"(i) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

"(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

"(iii) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

"(iv) such additional relevant factors as the Commission may establish by rule or regulation.

"(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original

information submitted to the Commission, a member, officer, or employee of—

"(i) an appropriate regulatory agency;

"(ii) the Department of Justice;

"(iii) a self-regulatory organization;

"(iv) the Public Company Accounting Oversight Board; or

"(v) a law enforcement organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

"(C) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

"(d) REPRESENTATION.—

"(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(2) REQUIRED REPRESENTATION.—

"(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously sub-

mits the information upon which the claim is based.

"(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

"(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

"(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission. The court shall review the determination made by the Commission in accordance with section 706 of title 5, United States Code.

"(g) INVESTOR PROTECTION FUND.—

"(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund

to be known as the 'Securities and Exchange Commission Investor Protection Fund'.

"(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

"(A) paying awards to whistleblowers as provided in subsection (b); and

"(B) funding the activities of the Inspector General of the Commission under section 4(i).

"(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund an amount equal to—

"(A) the amount awarded under subsection (b) from any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission that is based on information provided by a whistleblower under the securities laws, unless, the balance of the Fund at the time the monetary sanction is collected exceeds $200,000,000;

"(B) any monetary sanction added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the disgorgement fund was

established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $100,000,000; and

"(C) all income from investments made under paragraph (4).

"(4) INVESTMENTS.—

"(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

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

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

"(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the date of enactment of this subsection, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

"(A) the whistleblower award program, established under this section, including—

"(i) a description of the number of awards granted; and

"(ii) the types of cases in which awards were granted during the preceding fiscal year;

"(B) the balance of the Fund at the beginning of the preceding fiscal year;

"(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

"(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

"(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

"(F) the balance of the Fund at the end of the preceding fiscal year; and

"(G) a complete set of audited financial statements, including—

"(i) a balance sheet;

"(ii) income statement; and

"(iii) cash flow analysis.

"(h) PROTECTION OF WHISTLEBLOWERS.—

"(1) PROHIBITION AGAINST RETALIATION.—

"(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

"(i) in providing information to the Commission in accordance with subsection (a); or

"(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

"(B) ENFORCEMENT.—

"(i) CAUSE OF ACTION.—An individual who alleges discharge or other dis-

crimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

"(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

"(iii) STATUTE OF LIMITATIONS.—

"(I) IN GENERAL.—An action under this subsection may not be brought—

"(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred;

"(bb) or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

"(II) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

"(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

"(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

"(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and

"(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Unless and until required to be disclosed to a defendant or respondent in connection with a proceeding instituted by the Commission or any entity described in subparagraph (D), all information

provided to the Commission by a whistleblower—

"(i) in any proceeding in any Federal or State court or administrative agency—

"(I) shall be confidential and privileged as an evidentiary matter; and

"(II) shall not be subject to civil discovery or other legal process; and

"(ii) shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) or under any proceeding under that section.

"(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(C) RULE OF CONSTRUCTION.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential

witnesses or defendants in the course of an ongoing criminal investigation.

"(D) AVAILABILITY TO GOVERNMENT AGENCIES.—

"(i) IN GENERAL.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

"(I) the Attorney General of the United States;

"(II) an appropriate regulatory authority;

"(III) a self-regulatory organization;

"(IV) a State attorney general in connection with any criminal investigation;

"(V) any appropriate State regulatory authority;

"(VI) the Public Company Accounting Oversight Board;

"(VII) a foreign securities authority; and

"(VIII) a foreign law enforcement authority.

"(ii) CONFIDENTIALITY.—

"(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential and privileged, in accordance with the requirements established under subparagraph (A).

"(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

"(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any

Federal or State law, or under any collective bargaining agreement.

"(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section if the whistleblower—

"(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

"(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

"(j) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.".

SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)) is amended by inserting "and section 21F of the Securities Exchange Act of 1934" after "the Sarbanes-Oxley Act of 2002".

(2) INVESTMENT COMPANY ACT OF 1940.—Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by inserting ''and section 21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002''.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by inserting ''and section 21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002''.

(b) SECURITIES EXCHANGE ACT.—

(1) SECTION 21.—Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)) is amended by inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002''.

(2) SECTION 21A.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1) is amended—

(A) in subsection (d)(1) by—

(i) striking ''(subject to subsection (e))''; and

(ii) inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002'';

(B) by striking subsection (e); and

(C) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTION.

(a) IMPLEMENTING RULES.—The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

(b) ORIGINAL INFORMATION.—Information provided to the Commission by a whistleblower in accordance with the regulations referenced in subsection (a) shall not lose the status of original information (as defined in section 21F(i)(1) of the Securities Exchange Act of 1934, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, provided that the information is—

(1) provided by the whistleblower after the date of enactment of this subtitle, or monetary sanctions are collected after the date of enactment of this subtitle; or

(2) related to a violation for which an award under section 21F of the Securities Exchange Act of 1934, as added by this subtitle, could have been paid at the time the information was provided by the whistleblower.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle.

SEC. 925. COLLATERAL BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 15.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking ''12 months, or bar such person from being associated with a broker or dealer,'' and inserting ''12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,''.

(2) SECTION 15B.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–

4(c)(4)) is amended by striking ''twelve months or bar any such person from being associated with a municipal securities dealer,'' and inserting ''12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,''.

(3) SECTION 17A.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking ''twelve months or bar any such person from being associated with the transfer agent,'' and inserting ''12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization,''.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking ''twelve months or bar any such person from being associated with an investment adviser,'' and inserting ''12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advi-

sor transfer agent, or nationally recognized statistical rating organization,''.

SEC. 926. AUTHORITY OF STATE REGULATORS OVER REGULATION D OFFERINGS.

Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by striking ''A security'' and inserting ''(A) IN GENERAL'';

(2) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly; and

(3) by striking clause (iv), as so redesignated, and inserting the following:

''(iv) Commission rules or regulations issued under section 4(2), except that the Commission may designate, by rule, a class of securities that it deems not to be covered securities because the offering of such securities is not of sufficient size or scope.''.

''(B) DESIGNATION OF NON-COVERED SECURITIES.—In making a designation under subparagraph (A)(iv), the Commission shall consider—

''(i) the size of the offering;

"(ii) the number of States in which the security is being offered; and

"(iii) the nature of the persons to whom the security is being offered.

"(C) REVIEW OF FILINGS.—

"(i) IN GENERAL.—The Commission shall review any filings made relating to any security issued under Commission rules or regulations under section 4(2), other than one designated as a non-covered security under subparagraph (A)(iv), not later than 120 days of the filing with the Commission.

"(ii) FAILURE TO REVIEW WITHIN 120 DAYS.—If the Commission fails to review a filing required under clause (i), the security shall no longer be a covered security, except that—

"(I) the failure of the Commission to review a filing shall not result in the loss of status as a covered security if a State securities commissioner (or equivalent State officer) has determined that there has been a good faith and reasonable attempt by the

issuer to comply with all applicable terms, conditions, and requirements of the filing; and

"(II) upon review of the filing, the State securities commissioner (or equivalent State officer) determines that any failure to comply with the applicable filing terms, conditions, and requirements are insignificant to the offering as a whole.

"(D) EFFECT ON STATE FILING REQUIREMENTS.—

"(i) IN GENERAL.—Nothing in subparagraph (A)(iv), (B), or (C), shall be construed to prohibit a State from imposing notice filing requirements that are substantially similar to filing requirements required by rule or regulation under section 4(4) that were in effect on September 1, 1996.

"(ii) NOTIFICATION.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall implement procedures, after consultation with

the States, to promptly notify States upon completion of review of securities offerings described in subparagraph (A)(iv) by the Commission.''.

SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking ''an exchange required thereby'' and inserting ''a self-regulatory organization,''.

SEC. 928. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter preceding paragraph (1)—

(1) by striking '', unless exempt from registration pursuant to section 203(b),'' and inserting ''registered or required to be registered with the Commission'';

(2) by striking ''make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to''; and

(3) by striking ''to'' after ''in any way''.

SEC. 929. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking ''; and'' and inserting ''; or''.

SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDIARIES AND AFFILIATES OF PUBLICLY TRADED COMPANIES.

Section 1514A of title 18, United States Code, is amended by inserting ''including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company'' after ''the Securities Exchange Act of 1934 (15 U.S.C. 78o(d))''.

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

SEC. 931. FINDINGS.

Congress finds the following:

(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and

the efficient performance of the United States economy.

(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical ''gatekeeper'' role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial ''gatekeepers'' do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.

SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND TRANSPARENCY OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (c)—

(A) in paragraph (2), in the second sentence, by inserting ''any other provision of this section, or'' after ''Notwithstanding''; and

(B) by adding at the end the following:

''(3) INTERNAL CONTROLS OVER PROCESSES FOR DETERMINING CREDIT RATINGS.—

''(A) IN GENERAL.—Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effec-

tive internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

"(B) ATTESTATION REQUIREMENT.—The Commission shall prescribe rules requiring each nationally recognized statistical organization to submit to the Commission an annual internal controls report, which shall contain—

"(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

"(ii) an assessment of the effectiveness of the internal control structure of the national recognized statistical rating organization; and

"(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.";

(2) in subsection (d)—

(A) in the subsection heading, by inserting ''FINE,'' after ''CENSURE,'';

(B) by inserting ''fine,'' after ''censure,'' each place that term appears;

(C) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(D) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the subparagraph margins accordingly;

(E) in the matter preceding subparagraph (A), as so redesignated, by striking ''The Commission'' and inserting the following:

''(1) IN GENERAL.—The Commission'';

(F) in subparagraph (D), as so redesignated, by striking ''or'' at the end;

(G) in subparagraph (E), as so redesignated, by striking the period at the end and inserting a semicolon; and

(H) by adding at the end the following:

''(F) has failed reasonably to supervise, with a view to preventing a violation of the se-

curities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

"(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES.—

"(A) IN GENERAL.—The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings that are accurate.

"(B) CONSIDERATIONS.—In making any determination under subparagraph (A), the Commission shall consider—

"(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce ratings with integrity for that class or subclass of securities; and

"(ii) such other factors as the Commission may determine.";

(3) in subsection (h), by adding at the end the following:

"(3) SEPARATION OF RATINGS FROM SALES AND MARKETING.—

"(A) RULES REQUIRED.—The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

"(B) CONTENTS OF RULES.—The rules issued under subparagraph (A) shall provide for—

"(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

"(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commis-

sion finds, on the record, after notice and opportunity for a hearing, that—

"(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

"(II) the violation of a rule issued under this subsection affected a rating.";

(4) in subsection (j)—

(A) by striking "Each" and inserting the following:

"(1) IN GENERAL.—Each"; and

(B) by adding at the end the following:

"(2) LIMITATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

"(i) perform credit ratings;

"(ii) participate in the development of ratings methodologies or models;

"(iii) perform marketing or sales functions; or

"(iv) participate in establishing compensation levels, other than for employees working for that individual.

"(B) EXCEPTION.—The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

"(3) OTHER DUTIES.—Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

"(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

"(B) confidential, anonymous complaints by employees or users of credit ratings.

"(4) ANNUAL REPORTS REQUIRED.—

"(A) ANNUAL REPORTS REQUIRED.—Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statis-

tical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

"(i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and

"(ii) a certification that the report is accurate and complete.

"(B) SUBMISSION OF REPORTS TO THE COMMISSION.—Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section."; and

(5) by striking subsection (p) and inserting the following:

"(p) REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

"(1) ESTABLISHMENT OF OFFICE OF CREDIT RATINGS.—

"(A) OFFICE ESTABLISHED.—The Commission shall establish within the Commission

an Office of Credit Ratings (referred to in this subsection as the 'Office') to administer the rules of the Commission—

"(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

"(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

"(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

"(B) DIRECTOR OF THE OFFICE.—The head of the Office shall be the Director, who shall report to the Chairman.

"(2) STAFFING.—The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

"(3) COMMISSION EXAMINATIONS.—

"(A) ANNUAL EXAMINATIONS REQUIRED.—The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

"(B) CONDUCT OF EXAMINATIONS.—Each examination under subparagraph (A) shall include a review of—

"(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

"(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

"(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

"(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

"(v) the governance of the nationally recognized statistical rating organization;

"(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

"(vii) the processing of complaints by the nationally recognized statistical rating organization; and

"(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

"(C) INSPECTION REPORTS.—The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

"(i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;

"(ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and

"(iii) whether the nationally recognized statistical organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

"(4) RULEMAKING AUTHORITY.—The Commission shall—

"(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this subsection and the rules thereunder; and

"(B) issue such rules as may be necessary to carry out this subsection.

"(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

"(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of rat-

ings by different nationally recognized statistical rating organizations.

"(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

"(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

"(B) are clear and informative for investors who use or might use credit ratings;

"(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

"(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested; and

"(E) are appropriate to the business model of a nationally recognized statistical rating organization.

"(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

"(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

"(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior credit officer of the nationally recognized statistical rating organization; and

"(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

"(2) to ensure that when material changes to credit rating procedures and methodologies, includ-

ing changes to qualitative and quantitative data and models, are made, that—

"(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

"(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

"(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

"(3) to notify users of credit ratings—

"(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

"(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

"(C) when a significant error is identified in a procedure or methodology, including a

qualitative or quantitative model, that may result in credit rating actions; and

"(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

"(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

"(1) FORM FOR DISCLOSURES.—The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

"(A) information relating to—

"(i) the assumptions underlying the credit rating procedures and methodologies;

"(ii) the data that was relied on to determine the credit rating; and

"(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

"(B) information that can be used by investors and other users of credit ratings to bet-

ter understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

"(2) FORMAT.—The form developed under paragraph (1) shall—

"(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

"(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

"(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

"(3) CONTENT OF FORM.—

"(A) QUALITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

"(i) the credit ratings produced by the nationally recognized statistical rating organization;

"(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across obligors used in rating structured products;

"(iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;

"(iv) information on the uncertainty of the credit rating, including—

"(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

"(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

"(aa) any limits on the scope of historical data; and

"(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

"(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

"(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

"(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nation-

ally recognized statistical rating organization in rating similar issuances;

"(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

"(ix) such additional information as the Commission may require.

"(B) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

"(i) an explanation or measure of the potential volatility of the credit rating, including—

"(I) any factors that might lead to a change in the credit ratings; and

"(II) the magnitude of the change that a user can expect under different market conditions;

"(ii) information on the content of the rating, including—

"(I) the historical performance of the rating; and

"(II) the expected probability of default and the expected loss in the event of default;

"(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization; and

"(iv) such additional information as may be required by the Commission.

"(4) DUE DILIGENCE SERVICES FOR ASSET-BACKED SECURITIES.—

"(A) FINDINGS.—The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

"(B) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which such services relate,

written certification, as provided in subparagraph (C).

"(C) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

"(D) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.".

SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.

(a) ACCOUNTABILITY.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is amended to read as follows:

"(m) ACCOUNTABILITY.—

"(1) IN GENERAL.—The enforcement and penalty provisions of this title shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 21E.

"(2) RULEMAKING.—The Commission shall issue such rules as may be necessary to carry out this subsection.".

(b) STATE OF MIND.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2)) is amended—

(1) by striking "In any" and inserting the following:

"(A) IN GENERAL.—Except as provided in subparagraph (B), in any"; and

(2) by adding at the end the following:

"(B) EXCEPTION.—In the case of an action for money damages brought against a credit rating agency or a controlling person under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation

to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

"(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

"(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.".

SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

"(t) DUTY TO REPORT TIPS ALLEGING MATERIAL VIOLATIONS OF LAW.—

"(1) DUTY TO REPORT.—Each nationally recognized statistical rating organization shall refer to

the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

"(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).".

SEC. 935. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RATING DECISIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

"(u) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer, that the nationally recog-

nized statistical rating organization finds credible and potentially significant to a rating decision.''.

SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and

(2) is tested for knowledge of the credit rating process.

SEC. 937. TIMING OF REGULATIONS.

Unless otherwise specifically provided in this subtitle, the Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act.

SEC. 938. UNIVERSAL RATINGS SYMBOLS.

(a) RULEMAKING.—The Commission shall require, by rule, each nationally recognized statistical rating organiza-

tion to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

SEC. 939. GOVERNMENT ACCOUNTABILITY OFFICE STUDY AND FEDERAL AGENCY REVIEW OF REQUIRED USES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION RATINGS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the scope of provisions of Federal and State laws and regulations with respect to the regulation of securities markets, banking, insurance, and other areas that require the use of ratings issued by nationally recognized statistical rating organizations (in this section referred to as the ''ratings requirements'').

(b) SUBJECTS FOR EVALUATION; PROCESS OF EVALUATION.—

(1) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall evaluate—

(A) the necessity for and purpose of ratings requirements;

(B) which ratings requirements, if any, could be removed with minimal disruption to the financial markets;

(C) the potential impact on the financial markets and on investors if the ratings requirements identified under subparagraph (B) were rescinded; and

(D) whether the financial markets and investors would benefit from the rescission of such ratings requirements.

(2) PROCESS OF EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall research and take into consideration the views of—

(A) the Federal financial regulatory agencies;

(B) hedge funds;

(C) banks;

(D) brokerage firms;

(E) mutual funds;

(F) pension funds; and

(G) all other interested parties.

(c) REPORT AND RECOMMENDATIONS.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, on—

(1) which ratings requirements, if any, could be removed with minimal disruption to the markets; and

(2) whether the financial markets and investors would benefit from the rescission of the ratings requirements identified under paragraph (1).

(d) FEDERAL AGENCY REVIEW OF RATINGS REQUIREMENTS.—

(1) REVIEW.—Each covered Federal agency shall review—

(A) any regulation of the covered Federal agency that requires the use of an assessment of the credit worthiness of a security or money market instrument;

(B) any other reference to credit ratings or requirement relating to credit ratings in a regulation of the covered Federal agency; and

(C) alternative standards of creditworthiness that are based on market-generated indicators, including yield spreads, bond prices, and credit default swap spreads.

(2) MODIFICATIONS REQUIRED.—Except as provided in paragraph (3), each covered Federal agency shall modify any regulation identified under paragraph (1)—

(A) to remove any reference to credit ratings or a credit ratings requirement in the regulation; and

(B) to amend the regulation to require the use of a standard of credit worthiness that—

(i) is not related to credit ratings; and

(ii) the covered Federal agency determines appropriate.

(3) EXCEPTION.—A covered Federal agency may elect not to amend a regulation identified under paragraph (1), if the covered Federal agency determines that—

(A) there is no reasonable alternative standard of credit worthiness that could replace a credit rating for purposes of the regulation; and

(B) an amendment to the regulation would be inconsistent with the purposes of the statute that authorized the regulation and not in the public interest.

(4) REPORT.—Not later than 1 year after the date on which the Comptroller General submits the report required under subsection (c), each covered Federal agency shall submit to Congress a report that contains—

(A) a description of any amendment under paragraph (2); and

(B) an explanation of any determination under paragraph (3).

(5) DEFINITION.—In this subsection, the term ''covered Federal agency'' means—

(A) the Commission;

(B) the Corporation;

(C) the Office of the Comptroller of the Currency;

(D) the Board of Governors;

(E) the National Credit Union Administration; and

(F) the Federal Housing Finance Agency.

SEC. 939A. SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.

(a) STUDY.—The Commission shall conduct a study of—

(1) the independence of nationally recognized statistical rating organizations; and

(2) how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally organized statistical rating organizations.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Commission shall evaluate—

(1) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

(2) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and

(3) any other issue relating to nationally recognized statistical organizations, as the Chairman of the Commission determines is appropriate.

(c) REPORT.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for improving the integrity of ratings issued by nationally recognized statistical rating organizations.

SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.

SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasability and merits of creating an independent professional organization for

rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

(1) establishing independent standards for governing the profession of rating analysts;

(2) establishing a code of ethical conduct; and

(3) overseeing the profession of rating analysts.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a).

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION.

(a) DEFINITION OF ASSET-BACKED SECURITY.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(65) ASSET-BACKED SECURITY.—The term 'asset-backed security'—

"(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a

mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

"(i) a collateralized mortgage obligation;

"(ii) a collateralized debt obligation;

"(iii) a collateralized bond obligation;

"(iv) a collateralized debt obligation of asset backed-securities;

"(v) a collateralized debt obligation of collateralized debt obligations; and

"(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

"(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.".

(b) CREDIT RISK RETENTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15F, as added by this Act, the following:

"SEC. 15G. CREDIT RISK RETENTION.

"(a) DEFINITIONS.—In this section—

"(1) the term 'Federal banking agencies' means the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation;

"(2) the term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

"(3) the term 'securitizer' means—

"(A) an issuer of an asset-backed security; or

"(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

"(4) the term 'originator' means a person who sells an asset to a securitizer.

"(b) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a material portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

1 "(c) STANDARDS FOR REGULATIONS.—
2 "(1) STANDARDS.—The regulations prescribed
3 under subsection (b) shall—
4 "(A) prohibit a securitizer from directly or
5 indirectly hedging or otherwise transferring the
6 credit risk that the securitizer is required to re-
7 tain with respect to an asset;
8 "(B) require a securitizer to retain—
9 "(i) not less than 5 percent of the
10 credit risk for any asset that is trans-
11 ferred, sold, or conveyed through the
12 issuance of an asset-backed security by the
13 securitizer; or
14 "(ii) less than 5 percent of the credit
15 risk for an asset that is transferred, sold,
16 or conveyed through the issuance of an
17 asset-backed security by the securitizer, if
18 the originator of the asset meets the un-
19 derwriting standards prescribed under
20 paragraph (2)(B);
21 "(C) specify—
22 "(i) the permissible forms of risk re-
23 tention for purposes of this section; and
24 "(ii) the minimum duration of the
25 risk retention required under this section;

"(D) apply, regardless of whether the securitizer is an insured depository institution; and

"(E) provide for—

"(i) a total or partial exemption of any securitization, as may be appropriate in the public interest or for the protection of investors; and

"(ii) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

"(2) ASSET CLASSES.—

"(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

"(B) CONTENTS.—For each asset class established under subparagraph (A), the regula-

tions prescribed under subsection (b) shall establish underwriting standards that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a reduced credit risk with respect to the loan.

"(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(ii), the Federal banking agencies and the Commission shall—

"(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

"(2) consider—

"(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect reduced credit risk;

"(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

"(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms.

"(e) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

"(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

"(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

"(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

"(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

"(f) ENFORCEMENT.—The regulations issued under this section shall be enforced by—

"(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

"(2) the Commission, with respect to any securitizer that is not an insured depository institution.

"(g) AUTHORITY OF COMMISSION.—The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

"(h) EFFECTIVE DATE OF REGULATIONS.—The regulations issued under this section shall become effective—

"(1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and

"(2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on which final rules under this section are published in the Federal Register.".

SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-BACKED SECURITIES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 15(d) of Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by striking ''(d) Each'' and inserting the following:

''(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

''(1) IN GENERAL.—Each'';

(2) in the third sentence, by inserting after ''securities of each class'' the following: '', other than any class of asset-backed securities,''; and

(3) by adding at the end the following:

''(2) ASSET-BACKED SECURITIES.—

''(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and prescribe require-

ments appropriate for each class of issuer of asset-backed security.''.

(b) SECURITIES ACT OF 1933.—Section 7 of the Securities Act of 1933 (15 U.S.C. 77g) is amended by adding at the end the following:

''(c) DISCLOSURE REQUIREMENTS.—

''(1) IN GENERAL.—The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

''(2) CONTENT OF REGULATIONS.—In adopting regulations under this subsection, the Commission shall—

''(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

''(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data necessary for investors to independently perform due diligence, including—

''(i) data having unique identifiers relating to loan brokers or originators;

"(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

"(iii) the amount of risk retention by the originator and the securitizer of such assets.".

SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(65) of the Securities Exchange Act of 1934, as added by this subtitle) that—

(1) require each national recognized statistical rating organization to include in any report accompanying a credit rating a description of—

(A) the representations, warranties, and enforcement mechanisms available to investors; and

(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange

Act of 1934, as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

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

(1) by striking paragraph (5); and

(2) by striking ''(6) transactions'' and inserting the following:

''(5) transactions''.

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking ''4(6)'' and inserting ''4(5)''.

SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN ASSET-BACKED SECURITIES ISSUES.

Section 7 of the Securities Act of 1933 (15 U.S.C. 77g), as amended by this subtitle, is amended by adding at the end the following:

''(d) REGISTRATION STATEMENT FOR ASSET-BACKED SECURITIES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall

issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(65) of the Securities Exchange Act of 1934) that require any issuer of an asset-backed security—

"(1) to perform a due diligence analysis of the assets underlying the asset-backed security; and

"(2) to disclose the nature of the analysis under paragraph (1).".

Subtitle E—Accountability and Executive Compensation

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

"SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

"(a) SEPARATE RESOLUTION REQUIRED.—Any proxy or consent or authorization for an annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section, for which the proxy solicitation rules of the Commission require compensation disclosure, shall include a separate resolution subject to shareholder vote to approve

the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

"(b) RULE OF CONSTRUCTION.—The shareholder vote referred to in subsection (a) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

"(1) as overruling a decision by such issuer or board of directors;

"(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

"(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

"(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.".

SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.

The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:

"SEC. 10C. COMPENSATION COMMITTEES.

"(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities ex-

changes and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this subsection.

"(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

"(A) a member of the board of directors of the issuer; and

"(B) independent.

"(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term 'independence' for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

"(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

"(B) whether a member of the board of directors of an issuer is affiliated with the issuer,

a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

"(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

"(b) INDEPENDENCE OF COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

"(2) RULES.—The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer, including—

"(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

"(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

"(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

"(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

"(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

"(c) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) AUTHORITY TO RETAIN COMPENSATION CONSULTANT.—

"(A) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

"(B) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

"(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

"(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

"(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is

1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

"(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

"(B) the work of the compensation committee has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

"(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

"(2) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

"(3) RULE OF CONSTRUCTION.—This subsection may not be construed—

"(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

"(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(e) COMPENSATION OF COMPENSATION CONSULTANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVISORS.—Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

"(1) to a compensation consultant; and

"(2) to independent legal counsel or any other adviser to the compensation committee.

"(f) COMMISSION RULES.—

"(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—

"(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

"(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.".

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(j) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in the annual proxy statement of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.".

SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.

Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following:

"(h) RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION POLICY.—

"(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that

does not comply with the requirements of this subsection.

"(2) RECOVERY OF FUNDS.—The rules of the Commission under paragraph (1) shall require each issuer to develop and implement a policy providing—

"(A) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

"(B) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.".

SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

''(l) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in the annual proxy statement of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

''(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

''(2) held, directly or indirectly, by the employee or member of the board of directors.''.

SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPANIES OF DEPOSITORY INSTITUTIONS.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following:

1 "(h) EXCESSIVE COMPENSATION.—
2 "(1) IN GENERAL.—Not later than 180 days
3 after the transfer date established under section 311
4 of the Restoring American Financial Stability Act of
5 2010, the Board of Governors shall, by rule, estab-
6 lish standards prohibiting as an unsafe and unsound
7 practice any compensation plan of a bank holding
8 company that—
9 "(A) provides an executive officer, em-
10 ployee, director, or principal shareholder of the
11 bank holding company with excessive compensa-
12 tion, fees, or benefits; or
13 "(B) could lead to material financial loss
14 to the bank holding company.
15 "(2) CONSIDERATIONS.—In establishing the
16 standards under paragraph (1), the Board of Gov-
17 ernors shall take into consideration the compensa-
18 tion standards described in section 39(c) of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1831p–
20 1(c)).".

Subtitle F—Improvements to the Management of the Securities and Exchange Commission

SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SUPERVISORY CONTROLS.

(a) ANNUAL REPORTS AND CERTIFICATION.—Not later than 90 days after end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporation financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).

(c) CERTIFICATION.—

(1) SIGNATURE.—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) CONTENT OF CERTIFICATION.—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

(d) REVIEW BY THE COMPTROLLER GENERAL.—Not later than the date on which the first report is submitted under subsection (a), the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an initial report that contains a review of the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1).

SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGEMENT.

(a) TRIENNIAL REPORT REQUIRED.—Once every 3 years, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing,

and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

(b) CONTENTS OF REPORT.—Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the application of the promotion criteria to the decisions of the Commission;

(D) the competence the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the identification of su-

pervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low-level, mid-level, or senior-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate;

(2) an evaluation of any improvements made with respect to the areas described in paragraph (1) since the date of submission of the previous report; and

(3) recommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.

(c) CONSULTATION.—In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, the In-

spector General of the Commission, persons that have business before the Commission, any union representing the employees of the Commission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

(d) REPORT BY COMMISSION.—Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

(e) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under this section, as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Ac-

countability Office'' current when the payment is received; and

(B) remain available until expended.

SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.

(a) REPORTS OF COMMISSION.—

(1) ANNUAL REPORTS REQUIRED.—Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

(2) ATTESTATION.—The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

(b) REPORT BY COMPTROLLER GENERAL.—

(1) REPORT REQUIRED.—Not later than 6 months after the end of the first fiscal year after the date of enactment of this Act, the Comptroller Gen-

eral of the United States shall submit a report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

(2) ATTESTATION.—The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

(c) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (b), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account ''Salaries and Expenses, Government Accountability Office'' current when the payment is received; and

(B) remain available until expended.

SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURITIES ASSOCIATIONS.

(a) REPORT REQUIRED.—Not later than 2 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the regulatory enforcement or rulemaking by such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

(4) the arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations;

(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

(A) the methods of funding;

(B) the sufficiency of funds;

(C) how funds are invested by the national securities association pending use; and

(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

(8) the policies regarding the employment of former employees of the national securities association by regulated entities;

(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

(10) the transparency of governance and activities of the national securities associations; and

(11) any other issue that has an impact, as determined by the Comptroller General on—

(A) the effectiveness of such national securities associations in performing the mission of the national securities associations;

(B) the public confidence in such national securities associations; and

(C) the confidence of the members of such national securities associations in the national securities associations.

(b) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account ''Salaries and Expenses, Government Accountability Office'' current when the payment is received; and

(B) remain available until expended.

SEC. 965. COMPLIANCE EXAMINERS.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(h) EXAMINERS.—

"(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

"(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

"(B) report to the Director of that Division.

"(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

"(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

"(B) report to the Director of that Division.".

SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4C (15 U.S.C. 78d–3) the following:

"SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.

"(a) SUGGESTION SUBMISSIONS BY COMMISSION EMPLOYEES.—

"(1) HOTLINE ESTABLISHED.—The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

"(A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and

"(B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.

"(2) CONFIDENTIALITY.—The Inspector General shall maintain as confidential—

"(A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and

"(B) at the request of any such individual, any specific information provided by the individual.

"(b) CONSIDERATION OF REPORTS.—The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.

"(c) RECOGNITION.—The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

"(1) increase the work efficiency, effectiveness, or productivity of the Commission; or

"(2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

"(d) REPORT.—The Inspector General of the Commission shall submit to Congress an annual report containing a description of—

"(1) the nature, number, and potential benefits of any suggestions received under subsection (a);

"(2) the nature, number, and seriousness of any allegations received under subsection (a);

"(3) any recommendations made or actions taken by the Inspector General in response to sub-

stantiated allegations received under subsection (a); and

"(4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

"(e) FUNDING.—The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 21F.".

Subtitle G—Strengthening Corporate Governance

SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN UNCONTESTED ELECTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

"SEC. 14B. CORPORATE GOVERNANCE.

"(a) CORPORATE GOVERNANCE STANDARDS.—

"(1) LISTING STANDARDS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any

security of an issuer that is not in compliance with any of the requirements of this subsection.

"(B) OPPORTUNITY TO COMPLY AND CURE.—The rules established under this paragraph shall allow an issuer to have an opportunity to come into compliance with the requirements of this subsection, and to cure any defect that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

"(C) AUTHORITY TO EXEMPT.—The Commission may, by rule or order, exempt an issuer from any or all of the requirements of this subsection and the rules issued under this subsection, based on the size of the issuer, the market capitalization of the issuer, the number of shareholders of record of the issuer, or any other criteria, as the Commission deems necessary and appropriate in the public interest or for the protection of investors.

"(2) COMMISSION RULES ON ELECTIONS.—In an election for membership on the board of directors of an issuer—

"(A) that is uncontested, each director who receives a majority of the votes cast shall be deemed to be elected;

"(B) that is contested, if the number of nominees exceeds the number of directors to be elected, each director shall be elected by the vote of a plurality of the shares represented at a meeting and entitled to vote; and

"(C) if a director of an issuer receives less than a majority of the votes cast in an uncontested election—

"(i) the director shall tender the resignation of the director to the board of directors; and

"(ii) the board of directors—

"(I) shall—

"(aa) accept the resignation of the director;

"(bb) determine a date on which the resignation will take effect, within a reasonable period of time, as established by the Commission; and

"(cc) make the date under item (bb) public within a reason-

able period of time, as established by the Commission; or

"(II) shall, upon a unanimous vote of the board, decline to accept the resignation and, not later than 30 days after the date of the vote (or within such shorter period as the Commission may establish), make public, together with a discussion of the analysis used in reaching the conclusion, the specific reasons that—

"(aa) the board chose not to accept the resignation; and

"(bb) the decision was in the best interests of the issuer and the shareholders of the issuer.".

SEC. 972. PROXY ACCESS.

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

"(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an

issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

"(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).".

(b) REGULATIONS.—The Commission may issue rules permitting the use by shareholders of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

Section 14B of the Securities Exchange Act of 1934, as added by section 971, is amended by adding at the end the following:

"(b) DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

"(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

"(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).".

Subtitle H—Municipal Securities

SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND CHANGES TO THE BOARD OF THE MSRB.

(a) REGISTRATION OF MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)) is amended—

(1) in paragraph (1)—

(A) by inserting "(A)" after "(1)"; and

(B) by adding at the end the following:

"(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity, unless the municipal advisor is registered in accordance with this subsection.";

(2) in paragraph (2), by inserting "or municipal advisor" after "municipal securities dealer" each place that term appears;

(3) in paragraph (3), by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(4) in paragraph (4), by striking ''dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers'' and inserting ''dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors''; and

(5) by adding at the end the following:

''(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or participation in the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.''.

(b) MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''Not later than'' and all that follows through ''appointed by the Commission'' and inserting ''The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),'';

(B) by striking the second sentence and inserting the following: ''The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are not associated with any broker, dealer, municipal securities dealer, or municipal advisor (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry

(which members are hereinafter referred to as 'public representatives'); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'broker-dealer representatives'), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives'), and at least 1 individual who is associated with a municipal advisor (which member is hereinafter referred to as the 'advisor representative').''; and

(C) in the third sentence, by striking ''initial'';

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting before the period at the end of the first sentence the following:

"and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, or participation in the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors"; and

(ii) by striking the second sentence;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting ", and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or participation in the issuance of municipal securities" after "sale of, any municipal security"; and

(II) by inserting ''and municipal entities or obligated persons'' after ''protection of investors'';

(ii) in clause (i), by striking ''municipal securities brokers and municipal securities dealers'' each place that term appears and inserting ''municipal securities brokers, municipal securities dealers, and municipal advisors'';

(iii) in clause (ii), by adding ''and'' at the end;

(iv) in clause (iii), by striking ''; and'' and inserting a period; and

(v) by striking clause (iv);

(C) in subparagraph (B), by striking ''nominations and elections'' and all that follows through ''specify'' and inserting ''nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives. Such rules shall provide that the membership of the Board shall at all times be as evenly divided in number as possible between entities or individuals who are subject to regulation by the Board and entities or individuals not subject to regulation by the

Board, provided, however, that a majority of the members of the Board shall at all times be public representatives. Such rules shall also specify'';

(D) in subparagraph (C)—

(i) by inserting ''and municipal financial products'' after ''municipal securities'' the first two times that term appears;

(ii) by inserting '', municipal entities, obligated persons,'' before ''and the public interest'';

(iii) by striking ''between'' and inserting ''among'';

(iv) by striking ''issuers, municipal securities brokers, or municipal securities dealers, to fix'' and inserting ''municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix''; and

(v) by striking ''brokers or municipal securities dealers, to regulate'' and inserting ''brokers, municipal securities dealers, or municipal advisors, to regulate'';

(E) in subparagraph (D)—

(i) by inserting ''and advice concerning municipal financial products'' after ''transactions in municipal securities'';

(ii) by striking ''That no'' and inserting ''that no'';

(iii) by inserting ''municipal advisor,'' before ''or person associated''; and

(iv) by striking ''a municipal securities broker or municipal securities dealer may be compelled'' and inserting ''a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled'';

(F) in subparagraph (E)—

(i) by striking ''municipal securities brokers and municipal securities dealers'' and inserting ''municipal securities brokers, municipal securities dealers, and municipal advisors''; and

(ii) by striking ''municipal securities broker or municipal securities dealer'' and inserting ''municipal securities broker, municipal securities dealer, or municipal advisor'';

(G) in subparagraph (G), by striking ''municipal securities brokers and municipal securities dealers'' and inserting ''municipal securities brokers, municipal securities dealers, and municipal advisors'';

(H) in subparagraph (J)—

(i) by striking ''municipal securities broker and each municipal securities dealer'' and inserting ''municipal securities broker, municipal securities dealer, and municipal advisor''; and

(ii) by striking the period at the end of the second sentence and inserting '', which may include charges for failure to submit to the Board required information or documents to any information system operated by the Board in a full, accurate, or timely manner, or any other failure to comply with the rules of the Board.'';

(I) in subparagraph (K)—

(i) by inserting ''broker, dealer, or'' before ''municipal securities dealer'' each place that term appears; and

(ii) by striking ''municipal securities investment portfolio'' and inserting ''re-

lated account of a broker, dealer, or municipal securities dealer''; and

(J) by adding at the end the following:

''(L) provide continuing education requirements for municipal advisors.

''(M) professional standards.

''(N) not impose an inappropriate regulatory burden on small municipal advisors.'';

(3) by redesignating paragraph (3) as paragraph (7); and

(4) by inserting after paragraph (2) the following:

''(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

''(A) establish information systems; and

''(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons which systems may be developed for the purposes of serving as a repository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization.

"(4) The Board shall provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under section 15A, or any other appropriate regulatory agency, as applicable.".

(c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVISORS AND OTHER MATTERS.—Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) is amended—

(1) in paragraph (1), by inserting ", and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or participation in the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person," after "any municipal security";

(2) in paragraph (2), by inserting "or municipal advisor" after "municipal securities dealer" each place that term appears;

(3) in paragraph (3)—

(A) by inserting ''or municipal entities'' after ''protection of investors'' each place that term appears; and

(B) by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(4) in paragraph (4), by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(5) in paragraph (6)(B), by inserting ''or municipal entities'' after ''protection of investors'';

(6) in paragraph (7)—

(A) in subparagraph (A)—

(i) in clause (i), by striking ''; and'' and inserting a semicolon;

(ii) in clause (ii), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(iii) the Commission, or its designee, in the case of municipal advisors.''.

(B) in subparagraph (B), by inserting ''or municipal entities'' after ''protection of investors''; and

(7) by adding at the end the following:

"(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board.

"(B) Fines collected by a registered securities association under section 15A(7) with respect to violations of the rules of the Board shall be accounted for by such registered securities association separately from other fines collected under section 15A(7) and shall be allocated between such registered securities association and the Board at the direction of the Commission.".

(d) ISSUANCE OF MUNICIPAL SECURITIES.—Section 15B(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) is amended—

(1) by striking "through a municipal securities broker or municipal securities dealer or otherwise" and insert "through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise"; and

(2) by inserting "or municipal advisors" before "to furnish".

(e) DEFINITIONS.—Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) is amended by adding at the end the following:

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

"(1) the term 'Board' means the Municipal Securities Rulemaking Board established under subsection (b)(1);

"(2) the term 'guaranteed investment contract' includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

"(3) the term 'investment strategies' includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

"(4) the term 'municipal advisor' means a person (who is not a municipal entity or an employee of a municipal entity) that—

"(A) provides advice to or on behalf of a municipal entity with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

"(B) undertakes a solicitation of a municipal entity (including financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, but not including registered brokers, dealers, and municipal securities dealers, attorneys offering legal advice or providing services that are of a traditional legal nature and engineers providing engineering advice);

"(5) the term 'municipal derivative' means any financial instrument contract designed to hedge a risk (including interest rate swaps, basis swaps, credit default swaps, caps, floors, and collars);

"(6) the term 'municipal financial product' means municipal derivatives and investment strategies;

"(7) the term 'rules of the Board' means the rules proposed and adopted by the Board under subsection (b)(2);

"(8) the term 'person associated with a municipal advisor' or 'associated person of an advisor' means—

"(A) any partner, officer, director, or branch manager of such municipal advisor (or

any person occupying a similar status or performing similar functions);

"(B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or participation in the issuance of municipal securities; and

"(C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor;

"(9) the term 'municipal entity' means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

"(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

"(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

"(C) any other issuer of municipal securities;

"(10) the term 'solicitation of a municipal entity or obligated person' means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control, with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or participation in the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

"(11) the term 'obligated person' means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by con-

tract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.''.

(f) REGISTERED SECURITIES ASSOCIATION.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following:

''(15) The rules of the association provide that the association shall—

''(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

''(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 15B(b)(2)(E), so that the Municipal Securities Rulemaking Board may—

''(i) assist in such enforcement actions and examinations; and

''(ii) evaluate the ongoing effectiveness of the rules of the Board.''.

(g) REGISTRATION AND REGULATION OF BROKERS AND DEALERS.—Section 15 of the Securities Exchange Act of 1934 is amended—

(1) in subsection (b)(4), by inserting ''municipal advisor,'' after ''municipal securities dealer'' each place that term appears; and

(2) in subsection (c), by inserting ''broker, dealer, or'' before ''municipal securities dealer'' each place that term appears.

(h) ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Section 17(a)(1) of the Securities Exchange Act of 1934 is amended by inserting ''municipal advisor,'' after ''municipal securities dealer''.

(i) SAVINGS CLAUSE.—Notwithstanding any provision of the Over-the-Counter Derivatives Markets Act of 2010, or any amendment made pursuant to such Act, the provisions of this section, and the amendments made pursuant to this section, shall apply to any municipal derivative.

(j) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on October 1, 2010.

SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF INCREASED DISCLOSURE TO INVESTORS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure required to be made by issuers of municipal securities.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall—

(1) broadly describe—

(A) the size of the municipal securities markets and the issuers and investors; and

(B) the disclosures provided by issuers to investors;

(2) compare the amount, frequency, and quality of disclosures that issuers of municipal securities are required by law to provide for the benefit of municipal securities holders, including the amount of and frequency of disclosures actually provided by issuers of municipal securities, with the amount of and frequency of disclosures that issuers of corporate securities provide for the benefit of corporate securities holders, taking into account the differences between issuers of municipal securities and issuers of corporate securities;

(3) evaluate the costs and benefits to various types of issuers of municipal securities of requiring issuers of municipal bonds to provide additional financial disclosures for the benefit of investors; and

(4) make recommendations relating to disclosure requirements for municipal issuers, including

the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) (commonly known as the ''Tower Amendment'').

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study conducted under subsection (a), including recommendations for how to improve disclosure by issuers of municipal securities.

SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE MUNICIPAL SECURITIES MARKETS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the municipal securities markets.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with copies to the Special Committee on Aging of the Senate and the Commission, on the results of the study conducted under subsection (a), including—

(1) an analysis of the mechanisms for trading, quality of trade executions, market transparency,

trade reporting, price discovery, settlement clearing, and credit enhancements;

(2) the needs of the markets and investors and the impact of recent innovations;

(3) recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities market, including with reference to items listed in paragraph (1); and

(4) potential uses of derivatives in the municipal markets.

(c) RESPONSES.—Not later than 180 days after receipt of the report required under subsection (b), the Commission shall submit a response to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Financial Services Committee of the House of Representatives, with a copy to the Special Committee on Aging of the Senate, stating the actions the Commission has taken in response to the recommendations contained in such report.

SEC. 978. STUDY OF FUNDING FOR GOVERNMENT ACCOUNTING STANDARDS BOARD.

(a) STUDY.—The Commission shall conduct a study that evaluates—

(1) the role and importance of the Government Accounting Standards Board in the municipal securities markets;

(2) the manner in which the Government Accounting Standards Board is funded, and how such manner of funding affects the financial information available to securities investors;

(3) the advisability of changes to the manner in which the Government Accounting Standards Board is funded; and

(4) whether legislative changes to the manner in which the Government Accounting Standards Board is funded are necessary for the benefit of investors and in the public interest.

(b) CONSULTATION.—In conducting the study required under subsection (a), the Commission shall consult with State and local government financial officers.

(c) REPORT.—Not later than 270 days after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under subsection (a).

SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.

(a) IN GENERAL.—There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) DIRECTOR OF THE OFFICE.—The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) STAFFING.—

(1) IN GENERAL.—The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.

(2) REQUIREMENT.—The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION WITH FOREIGN AUTHORITIES.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by adding at the end the following:

"(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term 'foreign auditor oversight authority' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.".

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

"(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public ac-

counting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

"(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

"(ii) the foreign auditor oversight authority provides—

"(I) such assurances of confidentiality as the Board may request;

"(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

"(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

"(iii) the Board determines that it is appropriate to share such information.".

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.

(a) DEFINITIONS.—

(1) DEFINITIONS AMENDED.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) is amended by adding at the end the following new section:

''SEC. 110. DEFINITIONS.

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

''(1) AUDIT.—The term 'audit' means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

''(2) AUDIT REPORT.—The term 'audit report' means a document, report, notice, or other record—

''(A) prepared following an audit performed for purposes of compliance by an issuer,

broker, or dealer with the requirements of the securities laws; and

"(B) in which a public accounting firm either—

"(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

"(ii) asserts that no such opinion can be expressed.

"(3) BROKER.—The term 'broker' means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(4) DEALER.—The term 'dealer' means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C.

78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(5) PROFESSIONAL STANDARDS.—The term 'professional standards' means—

"(A) accounting principles that are—

"(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

"(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

"(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

"(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

"(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

"(6) SELF-REGULATORY ORGANIZATION.—The term 'self-regulatory organization' has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).".

(2) CONFORMING AMENDMENT.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended in the matter preceding paragraph (1), by striking "In this" and inserting "Except as otherwise specifically provided in this Act, in this".

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211) is amended—

(1) by striking "issuers" each place that term appears and inserting "issuers, brokers, and dealers"; and

(2) in subsection (a)—

(A) by striking ''public companies'' and inserting ''companies''; and

(B) by striking ''for companies the securities of which are sold to, and held by and for, public investors''.

(c) REGISTRATION WITH THE BOARD.—Section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amended—

(1) in subsection (a)—

(A) by striking ''Beginning 180'' and all that follows through ''101(d), it'' and inserting ''It''; and

(B) by striking ''issuer'' and inserting ''issuer, broker, or dealer'';

(2) in subsection (b)—

(A) in paragraph (2)(A), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''; and

(B) by striking ''issuer'' each place that term appears and inserting ''issuer, broker, or dealer''.

(d) AUDITING AND INDEPENDENCE.—Section 103(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)) is amended—

(1) in paragraph (1), by striking ''and such ethics standards'' and inserting ''such ethics standards, and such independence standards'';

(2) in paragraph (2)(A)(iii), by striking ''describe in each audit report'' and inserting ''in each audit report for an issuer, describe''; and

(3) in paragraph (2)(B)(i), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''.

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—Section 104 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214) is amended—

(1) in subsection (a), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''; and

(2) in subsection (b)(1)—

(A) by striking ''audit reports for'' each place that term appears and inserting ''audit reports on annual financial statements for'';

(B) in subparagraph (A), by striking ''and'' at the end;

(C) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(C) with respect to each registered public accounting firm that regularly provides audit

reports and that is not described in subparagraph (A) or (B), on a basis determined by the Board, by rule, that is consistent with the public interest and protection of investors.''.

(f) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

(1) in the subparagraph heading, by inserting '', BROKER, OR DEALER'' after ''ISSUER'';

(2) by striking ''any issuer'' each place that term appears and inserting ''any issuer, broker, or dealer''; and

(3) by striking ''an issuer under this subsection'' and inserting ''a registered public accounting firm under this subsection''.

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216(a)) is amended—

(1) in paragraph (1), by striking ''issuer'' and inserting ''issuer, broker, or dealer''; and

(2) in paragraph (2), by striking ''issuers'' and inserting ''issuers, brokers, or dealers''.

(h) FUNDING.—Section 109 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219) is amended—

(1) in subsection (c)(2), by striking ''subsection (i)'' and inserting ''subsection (j)'';

(2) in subsection (d)—

(A) in paragraph (2), by striking ''allowing for differentiation among classes of issuers, as appropriate'' and inserting ''and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate''; and

(B) by adding at the end the following:

''(3) BROKERS AND DEALERS.—The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after the effective date of this paragraph.'';

(3) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(4) by inserting after subsection (g) the following:

''(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

''(1) OBLIGATION TO PAY.—Each broker or dealer shall pay to the Board the annual accounting

support fee allocated to such broker or dealer under this section.

"(2) ALLOCATION.—Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

"(3) PROPORTIONALITY.—The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer, compared to the total net capital of all brokers and dealers, in accordance with rules issued by the Board.".

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B)) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following:

"(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;".

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)) is amended—

(1) in subclause (III), by striking ''and'' at the end;

(2) in subclause (IV), by striking the comma and inserting ''; and''; and

(3) by inserting after subclause (IV) the following:

''(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,''.

(k) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 983. PORTFOLIO MARGINING.

(a) ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1)) is amended by inserting ''or options on commodity futures contracts'' after ''claim for securities''.

(b) DEFINITIONS.—Section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78*lll*) is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) CUSTOMER.—

"(A) IN GENERAL.—The term 'customer' of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

"(B) INCLUDED PERSONS.—The term 'customer' includes—

"(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

"(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures con-

tracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

"(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

"(C) EXCLUDED PERSONS.—The term 'customer' does not include any person, to the extent that—

"(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

"(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.";

(2) in paragraph (4)—

(A) in subparagraph (C), by striking "and" at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following:

"(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and";

(3) in paragraph (9), in the matter following subparagraph (L), by inserting after "Such term" the following: "includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term"; and

(4) in paragraph (11)

(A) in subparagraph (A)—

(i) by striking ''filing date, all'' and all that follows through the end of the subparagraph and inserting the following: ''filing date—

''(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

''(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; minus''; and

(B) in the matter following subparagraph (C), by striking ''In determining'' and inserting the following: ''A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such

claim shall be treated as a claim for cash. In determining''.

SEC. 984. LOAN OR BORROWING OF SECURITIES.

(a) RULEMAKING AUTHORITY.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following:

''(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.''.

(b) RULEMAKING REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.

SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURITIES LAWS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking ''individual;'' and inserting ''individual,'';

(2) in section 18 (15 U.S.C. 77r)—

(A) in subsection (b)(1)(C), by striking ''is a security'' and inserting ''a security''; and

(B) in subsection (c)(2)(B)(i), by striking ''State, or'' and inserting ''State or'';

(3) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking ''in paragraph (1) of (3)'' and inserting ''in paragraph (1) or (3)''; and

(4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking ''business entity;'' and inserting ''business entity,''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 2 (15 U.S.C. 78b), by striking ''affected'' and inserting ''effected'';

(2) in section 3 (15 U.S.C. 78c)—

(A) in subsection (a)(55)(A), by striking ''section 3(a)(12) of the Securities Exchange Act of 1934'' and inserting ''section 3(a)(12) of this title''; and

(B) in subsection (g), by striking ''company, account person, or entity'' and inserting ''company, account, person, or entity'';

(3) in section 10A(i)(1)(B) (15 U.S.C. 78j–1(i)(1)(B))—

(A) in the subparagraph heading, by striking ''MINIMUS'' and inserting ''MINIMIS''; and

(B) in clause (i), by striking ''nonaudit'' and inserting ''non-audit'';

(4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking ''earning statement'' and inserting ''earnings statement'';

(5) in section 15 (15 U.S.C. 78o)—

(A) in subsection (b)(1)—

(i) in subparagraph (B), by striking ''The order granting'' and all that follows through ''from such membership.''; and

(ii) in the undesignated matter immediately following subparagraph (B), by inserting after the first sentence the following: ''The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.'';

(6) in section 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(B) in subparagraph (B), as so redesignated, by striking ''The order granting'' and all

that follows through ''from such membership.''; and

(C) in the matter following subparagraph (B), as so redesignated, by inserting after the first sentence the following: ''The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.'';

(7) in section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), by striking ''section 206(b)'' and inserting ''section 206B'';

(8) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking ''15A(k) gives'' and inserting ''15A(k), give''; and

(9) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking ''paragraph (1) subsection'' and inserting ''Paragraph (1)''.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking ''section 2 of such Act'' and inserting ''section 2(a) of such Act''; and

(2) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking '', in the'' and inserting ''in the''.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)), in the matter following subparagraph (B)(vii)—

(A) by striking ''clause (vi)'' each place that term appears and inserting ''clause (vii)''; and

(B) in each of subparagraphs (A)(vi) and (B)(vi), by adding and at the end of subclause (III);

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by adding ''or'' after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking ''any provision of this subsection'' and inserting ''any provision of this paragraph'';

(4) in section 17(f) (15 U.S.C. 80a–17(f))—

(A) in paragraph (4), by striking ''No such member'' and inserting ''No member of a national securities exchange''; and

(B) in paragraph (6), by striking ''company may serve'' and inserting ''company, may serve''; and

(5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–60(a)(3)(B)(iii))—

(A) by striking ''paragraph (1) of section 205'' and inserting ''section 205(a)(1)''; and

(B) by striking ''clause (A) or (B) of that section'' and inserting ''paragraph (1) or (2) of section 205(b)''.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in section 203 (15 U.S.C. 80b–3)—

(A) in subsection (c)(1)(A), by striking ''principal business office and'' and inserting

"principal office, principal place of business, and"; and

(B) in subsection (k)(4)(B), in the matter following clause (ii), by striking "principal place of business" and inserting "principal office or place of business";

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by adding "or" after the semicolon at the end;

(3) in section 213(a) (15 U.S.C. 80b–13(a)), by striking "principal place of business" and inserting "principal office or place of business"; and

(4) in section 222 (15 U.S.C. 80b–18a), by striking "principal place of business" each place that term appears and inserting "principal office and place of business".

SEC. 986. CONFORMING AMENDMENTS RELATING TO REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking "the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),";

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

"(7) DEFINITION.—For purposes of this subsection, the term 'emergency' means—

"(A) a major market disturbance characterized by or constituting—

"(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

"(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

"(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

"(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

"(ii) the transmission or processing of securities transactions."; and

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking ''section 18(c) of the Public Utility Holding Company Act of 1935,''.

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by striking paragraph (17) and inserting the following:

''(17) The terms 'Securities Act of 1933' and 'Securities Exchange Act of 1934' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.'';

(2) in section 308 (15 U.S.C. 77hhh), by striking ''Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' each place that term appears and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934'';

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk), by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking ''Securities Act of 1933, or the Securities

Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''; and

(6) in section 326 (15 U.S.C. 77zzz), by striking ''Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)), by striking '' 'Public Utility Holding Company Act of 1935','';

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by striking paragraph (8) and inserting the following:

''(8) [Repealed]'';

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking ''the Public Utility Holding Company Act of 1935,''; and

(4) in section 50 (15 U.S.C. 80a–49), by striking ''the Public Utility Holding Company Act of 1935,''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(21)) is amended by striking "'Public Utility Holding Company Act of 1935',".

SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NONMATERIAL LOSSES TO THE DEPOSIT INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 38(k) of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended—

(1) in paragraph (2), by striking subparagraph (B) and inserting the following:

"(B) MATERIAL LOSS DEFINED.—The term 'material loss' means any estimated loss in excess of—

"(i) $100,000,000, if the loss occurs during the period beginning on September 30, 2009, and ending on December 31, 2010;

"(ii) $75,000,000, if the loss occurs during the period beginning on January 1, 2011, and ending on December 31, 2011; and

"(iii) $50,000,000, if the loss occurs on or after January 1, 2012.";

(2) in paragraph (4)(A) by striking ''the report'' and inserting ''any report on losses required under this subsection,'';

(3) by striking paragraph (6);

(4) by redesignating paragraph (5) as paragraph (6); and

(5) by inserting after paragraph (4) the following:

''(5) LOSSES THAT ARE NOT MATERIAL.—

''(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

''(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

''(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

''(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corpora-

tion as receiver under section 11(c)(5); and

"(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

"(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

"(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

"(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to

the Federal banking agency and Congress.

"(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of each Federal banking agency shall—

"(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

"(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for subsection (k) of section 38 of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended to read as follows:

"(k) REVIEWS REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS LOSSES.—".

SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NONMATERIAL LOSSES TO THE NATIONAL CREDIT UNION SHARE INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 216(j) of the Federal Credit Union Act (12 U.S.C. 1790d(j)) is amended to read as follows:

"(j) REVIEWS REQUIRED WHEN SHARE INSURANCE FUND EXPERIENCES LOSSES.—

"(1) IN GENERAL.—If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

"(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

"(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

"(ii) recommendations for preventing any such loss in the future; and

"(B) submit a copy of the report under subparagraph (A) to—

"(i) the Comptroller General of the United States;

"(ii) the Corporation;

"(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

"(iv) to any Member of Congress, upon request.

"(2) MATERIAL LOSS DEFINED.—For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

"(A) $25,000,000; and

"(B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 208 or was appointed liquidating agent.

"(3) PUBLIC DISCLOSURE REQUIRED.—

"(A) IN GENERAL.—The Board shall disclose a report under this subsection, upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5) of title 5, United States Code; or

"(ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5, United States Code.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.

"(4) LOSSES THAT ARE NOT MATERIAL.—

"(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

"(i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;

"(ii) for each loss to the Fund that is not a material loss, determine—

"(I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for

appointing the Board as the liquidating agent for any Federal or State credit union; and

"(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

"(iii) prepare and submit a written report to the Board and to the Congress on the results of the determinations of the Inspector General that includes—

"(I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and

"(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

"(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of the Board shall—

"(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

"(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

"(5) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

"(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) with respect to each such report; and

"(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).".

SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON PROPRIETARY TRADING.

(a) DEFINITIONS.—In this section—

(1) the term ''covered entity'' means—

(A) an insured depository institution, an affiliate of an insured depository institution, a bank holding company, a financial holding company, or a subsidiary of a bank holding company or a financial holding company, as those terms are defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.); and

(B) any other entity, as the Comptroller General of the United States may determine; and

(2) the term ''proprietary trading'' means the act of a covered entity investing as a principal in securities, commodities, derivatives, hedge funds, private equity firms, or such other financial products or entities as the Comptroller General may determine.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the risks and conflicts associated with proprietary trading by and within covered entities, including an evaluation of—

(A) whether proprietary trading presents a material systemic risk to the stability of the United States financial system, and if so, the costs and benefits of options for mitigating such systemic risk;

(B) whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities, and if so, the costs and benefits of options for mitigating such risks;

(C) whether proprietary trading present material conflicts of interest between covered entities that engage in proprietary trading and the clients of the institutions who use the firm to execute trades or who rely on the firm to manage assets, and if so, the costs and benefits of options for mitigating such conflicts of interest;

(D) whether adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of covered entities that engage in proprietary trading, and if not, the costs and benefits of options for the improvement of such disclosure; and

(E) whether the banking, securities, and commodities regulators of institutions that engage in proprietary trading have in place adequate systems and controls to monitor and contain any risks and conflicts of interest related to proprietary trading, and if not, the costs and benefits of options for the improvement of such systems and controls.

(2) CONSIDERATIONS.—In carrying out the study required under paragraph (1), the Comptroller General shall consider—

(A) current practice relating to proprietary trading;

(B) the advisability of a complete ban on proprietary trading;

(C) limitations on the scope of activities that covered entities may engage in with respect to proprietary trading;

(D) the advisability of additional capital requirements for covered entities that engage in proprietary trading;

(E) enhanced restrictions on transactions between affiliates related to proprietary trading;

(F) enhanced accounting disclosures relating to proprietary trading;

(G) enhanced public disclosure relating to proprietary trading; and

(H) any other options the Comptroller General deems appropriate.

(c) REPORT TO CONGRESS.—Not later than 15 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (b).

(d) ACCESS BY COMPTROLLER GENERAL.—For purposes of conducting the study required under subsection (b), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity), at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records, as the Comptroller General deems appropriate.

(e) CONFIDENTIALITY OF REPORTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Comptroller General may not disclose information regarding—

(A) any proprietary trading activity of a covered entity, unless such information is disclosed at a level of generality that does not reveal the investment or trading position or strategy of the covered entity for any specific security, commodity, derivative, or other investment or financial product; or

(B) any individual interviewed by the Comptroller General for purposes of the study under subsection (b), unless such information is disclosed at a level of generality that does not reveal—

(i) the name of or identifying details relating to such individual; or

(ii) in the case of an individual who is an employee of a third party that provides professional services to a covered entity believed to be engaged in proprietary trading, the name of or any identifying details relating to such third party.

(2) EXCEPTIONS.—The Comptroller General may disclose the information described in paragraph (1)—

(A) to a department, agency, or official of the Federal Government, for official use, upon request;

(B) to a committee of Congress, upon request; and

(C) to a court, upon an order of such court.

SEC. 989A. SENIOR INVESTOR PROTECTIONS.

(a) DEFINITIONS.—As used in this section—

(1) the term ''eligible entity'' means—

(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) adopted rules with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

(C) a consumer protection agency of any State, if—

(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

(2) the term ''financial product'' means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

(3) the term ''misleading designation''—

(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include a certification, professional designation, license, or other credential that—

(i) was issued by or obtained from an academic institution having regional accreditation;

(ii) meets the standards for certifications, licenses, and professional designations outlined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations in the Sale

of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

(iii) was issued by or obtained from a State;

(4) the term ''misleading or fraudulent marketing'' means the use of a misleading designation by a person that sells to or advises a senior in connection with the sale of a financial product;

(5) the term ''NASAA'' means the North American Securities Administrators Association;

(6) the term ''Office'' means the Office of Financial Literacy of the Bureau; and

(7) the term ''senior'' means any individual who has attained the age of 62 years or older.

(b) GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DESIGNATIONS.—The Office shall establish a program under which the Office may make grants to States or eligible entities—

(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

(c) APPLICATIONS.—A State or eligible entity desiring a grant under this section shall submit an application

to the Office, in such form and in such a manner as the Office may determine, that includes—

(1) a proposal for activities to protect seniors from misleading or fraudulent marketing that are proposed to be funded using a grant under this section, including—

(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

(B) a description of how the proposed activities would—

(i) protect seniors from misleading or fraudulent marketing in the sale of financial products, including by proactively identifying victims of misleading and fraudulent marketing who are seniors;

(ii) assist in the investigation and prosecution of those using misleading or fraudulent marketing; and

(iii) discourage and reduce cases of misleading or fraudulent marketing; and

(C) a description of how the proposed activities would be coordinated with other State efforts; and

(2) any other information, as the Office determines is appropriate.

(d) PERFORMANCE OBJECTIVES AND REPORTING REQUIREMENTS.—The Office may establish such performance objectives and reporting requirements for States and eligible entities receiving a grant under this section as the Office determines are necessary to carry out and assess the effectiveness of the program under this section.

(e) MAXIMUM AMOUNT.—The amount of a grant under this section may not exceed—

(1) $500,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted rules—

(A) on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on

the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(C) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); and

(2) $100,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted—

(A) rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto); or

(B) rules—

(i) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to

the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

(f) SUBGRANTS.—A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

(g) REAPPLICATION.—A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $8,000,000 for each of fiscal years 2011 through 2015.

SEC. 989B. CHANGES IN APPOINTMENT OF CERTAIN INSPECTORS GENERAL.

(a) ELEVATION OF CERTAIN INSPECTORS GENERAL TO APPOINTMENT PURSUANT TO SECTION 3 OF THE INSPECTOR GENERAL ACT OF 1978.—

(1) INCLUSION IN CERTAIN DEFINITIONS.—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1), by striking ''or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;'' and inserting ''the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the Chairman of the Board of Directors of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Di-

rector of the Bureau of Consumer Financial Protection;''; and

(B) in paragraph (2), by striking ''or the Commissions established under section 15301 of title 40, United States Code,'' and inserting ''the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Bureau of Consumer Financial Protection,''.

(2) EXCLUSION FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) by striking ''the Board of Governors of the Federal Reserve System,'';

(B) by striking ''the Commodity Futures Trading Commission,'';

(C) by striking ''the National Credit Union Administration,''; and

(D) by striking "the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,".

(b) CONTINUATION OF PROVISIONS RELATING TO PERSONNEL.—

(1) IN GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8L the following:

"SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ESTABLISHMENTS.

"(a) DEFINITION.—For purposes of this section, the term 'covered establishment' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission.

"(b) PROVISIONS RELATING TO ALL COVERED ESTABLISHMENTS.—

"(1) PROVISIONS RELATING TO INSPECTORS GENERAL.—In the case of the Inspector General of a covered establishment, subsections (b) and (c) of section 4 of the Inspector General Reform Act of 2008 (Public Law 110–409; 122 Stat. 4304) shall apply in the same manner as if such covered establishment were a designated Federal entity under sec-

tion 8G of this Act. An Inspector General who is subject to the preceding sentence shall not be subject to section 3(e) of this Act.

"(2) PROVISIONS RELATING TO OTHER PERSONNEL.—Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of the covered establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the covered establishment.

"(c) PROVISION RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—The provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the De-

1 partment of the Treasury and the Secretary of the Treas-
2 ury, respectively.''.
3 (2) CONFORMING AMENDMENT.—Paragraph (3)
4 of section 8G(g) of the Inspector General Act of
5 1978 (5 U.S.C. App.) is repealed.
6 (c) CORRECTIVE RESPONSES BY HEADS OF CERTAIN
7 ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY IN-
8 SPECTORS GENERAL.—The Chairman of the Board of
9 Governors, the Chairman of the Commodity Futures
10 Trading Commission, the Chairman of the National Credit
11 Union Administration, the Chairman of the Board of Di-
12 rectors of the Pension Benefit Guaranty Corporation, and
13 the Chairman of the Commission shall each—
14 (1) take action to address deficiencies identified
15 by a report or investigation of the Inspector General
16 of the establishment concerned; or
17 (2) certify to the Senate and the House of Rep-
18 resentatives that no action is necessary or appro-
19 priate in connection with a deficiency described in
20 paragraph (1).
21 (d) EFFECTIVE DATE; TRANSITION RULE.—
22 (1) EFFECTIVE DATE.—This section and the
23 amendments made by this section shall take effect
24 30 days after the date of the enactment of this Act.

(2) TRANSITION RULE.—An individual serving as Inspector General of the Board of Governors, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Commission on the effective date of this section pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Commission, as the case may be, consistent with the amendments made by subsection (a); and

(B) shall, while serving under subparagraph (A)—

(i) remain subject to the provisions of section 8G of such Act that applied with respect to the Inspector General of the Board of Governors, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension

Benefit Guaranty Corporation, or the Commission, as the case may be, on the day before the effective date of this section; and

(ii) suffer no reduction in pay.

Subtitle J—Self-funding of the Securities and Exchange Commission

SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-FUNDING.

(a) SELF-FUNDING AUTHORITY.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended—

(1) in subsection (c), in the second sentence, by striking ''credited to the appropriated funds of the Commission'' and inserting ''deposited in the account described in subsection (j)(4)'';

(2) in subsection (f), in the second sentence, by striking ''considered a reimbursement to the appropriated funds of the Commission'' and inserting ''deposited in the account described in subsection (j)(4)''; and

(3) by adding at the end the following:

''(j) FUNDING OF THE COMMISSION.—

"(1) BUDGET.—For each fiscal year, the Chairman of the Commission shall prepare and submit to Congress a budget to Congress. Such budget shall be submitted at the same time the President submits a budget of the United States to Congress for such fiscal year. The budget submitted by the Chairman of the Commission pursuant to this paragraph shall not be considered a request for appropriations.

"(2) TREASURY PAYMENT.—

"(A) On the first day of each fiscal year, the Treasury shall pay into the account described in paragraph (4) an amount equal to the budget submitted by the Chairman of the Commission pursuant to paragraph (1) for such fiscal year.

"(B) At or prior to the end of each fiscal year, the Commission shall pay to the Treasury from fees and assessments deposited in the account described in paragraph (4) an amount equal to the amount paid by the Treasury pursuant to subparagraph (A) for such fiscal year, unless there are not sufficient fees and assessments deposited in such account at or prior to the end of the fiscal year to make such pay-

ment, in which case the Commission shall make such payment in a subsequent fiscal year.

"(3) OBLIGATIONS AND EXPENSES.—

"(A) IN GENERAL.—The Commission shall determine and prescribe the manner in which—

"(i) the obligations of the Commission shall be incurred; and

"(ii) the disbursements and expenses of the Commission allowed and paid.

"(B) INSUFFICIENT FUNDS.—If, in the course of any fiscal year, the Chairman of the Commission determines that, due to unforeseen circumstances, the obligations of the Commission will exceed those provided for in the budget submitted under paragraph (1), the Chairman of the Commission may notify Congress of the amount and expected uses of the additional obligations.

"(C) AUTHORITY TO INCUR EXCESS OBLIGATIONS.—The Commission may incur obligations in excess of the budget submitted under paragraph (1) from amounts available in the account described in paragraph (4).

"(D) RULE OF CONSTRUCTION.—Any notification to Congress under this paragraph shall not be considered a request for appropriations.

"(4) ACCOUNT.—

"(A) ESTABLISHMENT.—Fees and assessments collected under this title, section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), and section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) and payments made by the Treasury pursuant to paragraph (2)(A) for any fiscal year shall be deposited into an account established at any regular Government depositary or any State or national bank.

"(B) RULE OF CONSTRUCTION.—Any amounts deposited into the account established under subparagraph (A) shall not be construed to be Government funds or appropriated monies.

"(C) NO APPORTIONMENT.—Any amounts deposited into the account established under subparagraph (A) shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

"(5) USE OF ACCOUNT FUNDS.—

"(A) PERMISSIBLE USES.—Amounts available in the account described in paragraph (4) may be withdrawn by the Commission and used for the purposes described in paragraphs (2) and (3).

"(B) IMPERMISSIBLE USE.—Except as provided in paragraph (6), no amounts available in the account described in paragraph (4) shall be deposited and credited as general revenue of the Treasury.

"(6) EXCESS FUNDS.—If, at the end of any fiscal year and after all payments have been made to the Treasury pursuant to paragraph (2)(B) for such fiscal year and all prior fiscal years, the balance of the account described in paragraph (4) exceeds 25 percent of the budget of the Commission for the following fiscal year, the amount by which the balance exceeds 25 percent of such budget shall be credited as general revenue of the Treasury.".

(b) CONFORMING AMENDMENTS TO TRANSACTION FEE PROVISIONS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) by amending subsection (a) to read as follows:

"(a) RECOVERY OF COSTS AND EXPENSES.—

"(1) IN GENERAL.—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed—

"(A) to recover the reasonable costs and expenses of the Commission, as set forth in the annual budget of the Commission; and

"(B) to provide funds necessary to maintain a reserve.

"(2) OVERPAYMENTS.—The authority to collect transaction fees and assessments in accordance with this section shall include the authority to offset from such collection any overpayment of transactions fees or assessments, regardless of the fiscal year in which such overpayment is made.";

(2) in subsection (e)(2), by striking "September 30" and inserting "September 25";

(3) in subsection (g), by striking "April 30" and inserting "August 31";

(4) by amending subsection (i) to read as follows:

"(i) FEE COLLECTIONS.—Fees and assessments collected pursuant to this section shall be deposited and credited in accordance with section 4(g) of this title.";

(5) by amending subsection (j) to read as follows:

"(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

"(1) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d)) that are equal to the budget of the Commission for such fiscal year, plus amounts necessary to maintain a reserve.

"(2) MID-YEAR ADJUSTMENT.—For each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 4 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, not later than March 1, adjust each

of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees estimated to be collected under subsections (b) and (c) during such fiscal year prior to the effective date of the new uniform adjusted rate and assessments collected under subsection (d)) that are equal to the budget of the Commission for such fiscal year, plus amounts necessary to maintain a reserve. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by paragraph (4).

"(3) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5 United States Code. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (1) shall take effect on the first day of the fiscal year to which such rate ap-

plies. An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.

"(4) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—For purposes of this subsection, the baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes excluding a narrow-based security index)) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 907 of title 2."; and

(6) by striking subsections (k) and (l).

(c) CONFORMING AMENDMENTS TO REGISTRATION FEE PROVISIONS.—

(1) SECTION 6(B) OF THE SECURITIES ACT OF 1933.—Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended—

(A) by striking ''offsetting'' each place that term appears and inserting ''fee'';

(B) in paragraph (3), in the paragraph heading, by striking ''OFFSETTING'' and inserting ''FEE'';

(C) in paragraph (11)(A), in the subparagraph heading, by striking ''OFFSETTING'' and inserting ''FEE'';

(D) by striking paragraphs (1), (3), (4), (6), (8), and (9);

(E) by redesignating paragraph (2) as paragraph (1);

(F) in paragraph (1), as so redesignated, by striking ''(5) or (6)'' and inserting ''(3)'';

(G) by inserting after paragraph (1), as so redesignated, the following:

''(2) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(j) of the Securities Exchange Act of 1934.'';

(H) by redesignating paragraph (5) as paragraph (3);

(I) in paragraph (3), as redesignated—

(i) by striking ''of the fiscal years 2003 through 2011'' and inserting ''fiscal year''; and

(ii) by striking ''paragraph (2)'' and inserting ''paragraph (1)'';

(J) by redesignating paragraph (7) as paragraph (4);

(K) by inserting after paragraph (4), as so redesignated, the following:

''(5) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (3) and published under paragraph (6) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (3) shall take effect on the first day of the fiscal year to which such rate applies.'';

(L) by redesignating paragraphs (10) and (11), as paragraphs (6) and (7);

(M) in paragraph (6), as redesignated, by striking ''April 30'' and inserting ''August 31''; and

(N) in paragraph (7), as redesignated—

(i) by striking ''of the fiscal years 2002 through 2011'' and inserting ''fiscal year''; and

(ii) by inserting at the end of the table in subparagraph (A) the following:

2012 and each succeeding fiscal year	**An amount that is equal to the target fee collection amount for the prior fiscal year adjusted by the rate of inflation.**

(2) SECTION 13(E) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(A) by striking ''offsetting'' each place that term appears and inserting ''fee'';

(B) in paragraph (3) by striking ''paragraphs (5) and (6)'' and inserting ''paragraph (5)'';

(C) by amending paragraph (4) to read as follows:

''(4) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(g) of this title.'';

(D) in paragraph (5), by striking ''of the fiscal years 2003 through 2011'' and inserting ''fiscal year'';

(E) by striking paragraphs (6), (7), and (8);

(F) by redesignating paragraph (7) as paragraph (6);

(G) by inserting after paragraph (6), as so redesignated, the following:

''(7) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) and published under paragraph (8) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (5) shall take effect on the first day of the fiscal year to which such rate applies.'';

(H) by striking paragraph (9);

(I) by redesignating paragraph (10) as paragraph (8); and

(J) in paragraph (8), as so redesignated, by striking ''6(b)(10)'' and inserting ''6(b)(6)''.

(3) SECTION 14 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 14(g) of the Securities Ex-

change Act of 1934 (15 U.S.C. 78n(g)) is amended—

(A) by striking the word ''offsetting'' each time that it appears and inserting in its place the word ''fee'';

(B) in paragraph (1)(A), by striking ''paragraphs (5) and (6)'' each time it appears and inserting ''paragraph (5)'';

(C) in paragraph (3), by striking ''paragraphs (5) and (6)'' and inserting ''paragraph (5)'';

(D) by amending paragraph (4) to read as follows:

''(4) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(g) of this title.'';

(E) in paragraph (5), by striking ''of the fiscal years 2003 through 2011'' and inserting ''fiscal year'';

(F) by striking paragraphs (6), (8), and (9);

(G) by redesignating paragraph (7) as paragraph (6);

(H) by inserting after paragraph (6), as so redesignated, the following:

"(7) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) and published under paragraph (8) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (5) shall take effect on the first day of the fiscal year to which such rate applies.";

(I) by redesignating paragraphs (10) and (11) as paragraphs (8) and (9), respectively; and

(J) in paragraph (9), as so redesignated, by striking "6(b)(10)" and inserting "6(b)(7)".

(d) REPEAL OF AUTHORIZATION OF APPROPRIATIONS.—Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is repealed.

(e) CONFORMING AMENDMENT TO TITLE 2.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after "Salaries of Article III judges;" the following:

"Securities and Exchange Commission: Salaries and Expenses (50-0100-0-1-376);".

(f) EFFECTIVE DATE AND TRANSITION PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall be effective on the first day of the fiscal year following the fiscal year in which this Act is enacted.

(2) TRANSITION PERIOD.—For the fiscal year following the fiscal year in which this Act is enacted, the budget of the Commission shall be deemed to be the budget submitted by the Chairman of the Commission to the President for such fiscal year in accordance with the provisions of section 1108 of title 31, United States Code.

(3) OTHER PROVISIONS.—The amendments made by this section to sections 31(g) and (j)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee (g) and (j)(1)) shall be effective on the date of enactment of this Act, and shall require the Commission to make and publish an annual adjustment to the fee rates applicable under sections 31(b) and (c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee (b) and (c)) for the fiscal year following the fiscal year in which this Act is enacted. The adjusted rate described in the preceding sentence shall

supersede any previously published adjusted rate applicable under sections 31 (b) and (c) of the Securities Exchange Act of 1934 for the fiscal year following the fiscal year in which this Act is enacted and shall take effect on the first day of the fiscal year following the fiscal year in which this Act is enacted, except that, if this Act is enacted on or after August 31 and on or prior to September 30, the adjusted rate described in the first sentence shall be published not later than 15 days after the date of enactment of this Act and take effect 30 days thereafter, and the Commission shall continue to collect fees under sections 31 (b) and (c) of the Securities Exchange Act of 1934 at the rate in effect during the preceding fiscal year until the adjusted rate is effective.

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Act of 2010''.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) BUREAU.—The term ''Bureau'' means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) CONSUMER.—The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''consumer financial product or service'' means any financial product or service described in one or more categories under—

(A) paragraph (13) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (13)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term ''covered person'' means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) CREDIT.—The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) DEPOSIT-TAKING ACTIVITY.—The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' means the date established under section 1062.

(10) DIRECTOR.—The term ''Director'' means the Director of the Bureau.

(11) ENUMERATED CONSUMER LAWS.—The term ''enumerated consumer laws'' means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (c) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.).

(12) FEDERAL CONSUMER FINANCIAL LAW.—The term ''Federal consumer financial law'' means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.

(13) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service''—

(A) means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the func-

tional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exer-

cises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment

instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) unknowingly or incidentally processes, stores, or transmits over the Internet, telephone line, mobile network, or any other mode of transmission, as part of a stream of other types of data, financial data in a manner that such data is undifferentiated from other types of data of the same form that the person processes, stores, or transmits;

(II) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating pay-

ments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(III) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person; or

(bb) provides the information described in item (aa) to an affiliate of such person; and

(II) the information described in subclause (I)(aa) is not used by such

person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers; and

(B) does not include the business of insurance.

(14) FOREIGN EXCHANGE.—The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(15) INSURED CREDIT UNION.—The term ''insured credit union'' has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(16) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(17) PERSON.—The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(18) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but

only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(19) PERSON REGULATED BY THE COMMISSION.—The term ''person regulated by the Commission'' means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934; and

(G) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (F), but only to the extent that any person described in any of subparagraphs (A) through (F), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(20) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term ''person regulated by a State insurance regulator'' means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(21) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(22) PRUDENTIAL REGULATOR.—The term ''prudential regulator'' means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(23) RELATED PERSON.—The term ''related person''—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(24) SERVICE PROVIDER.—

(A) IN GENERAL.—The term ''service provider'' means any person that provides a material service to a covered person in connection

with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term ''service provider'' does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person, to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(25) STATE.—The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

(26) STORED VALUE.—The term ''stored value'' means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(27) TRANSMITTING OR EXCHANGING MONEY.—The term ''transmitting or exchanging

money'' means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE BUREAU.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System the Bureau of Consumer Financial Protection, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the Bureau.

(2) APPOINTMENT.—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) QUALIFICATION.—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) COMPENSATION.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) TERM.—

(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) SERVICE RESTRICTION.—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, cov-

ered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) OFFICES.—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS OF THE BUREAU.—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) DELEGATION OF AUTHORITY.—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) AUTONOMY OF THE BUREAU.—

(1) COORDINATION WITH THE BOARD OF GOVERNORS.—Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) and any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) AUTONOMY.—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the function or responsibility of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Notwithstanding any other provision of law, all such employees shall be appointed and compensated on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

(2) COMPENSATION.—The Director shall at all times provide compensation and benefits to each class of employees that, at a minimum, are equivalent to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products

or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services; and

(E) consumer behavior with respect to consumer financial products or services.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and database to facilitate the centralized collection, monitoring, and response to con-

sumer complaints regarding consumer financial products or services. The Director shall coordinate with other Federal agencies to route complaints to other Federal regulators, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems; and

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources.

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial prod-

ucts and services. Such report shall include information and analysis about complaint numbers, types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, other Federal agencies, and State agencies, consistent with Federal law applicable to personally identifiable information. The prudential regulators and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, consistent with Federal law applicable to personally identifiable information.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending and fair housing efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the

Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL LITERACY.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Education, through activities including providing opportunities for consumers to access—

(A) financial counseling;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually there-

after, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

''(C) the Director of the Bureau of Consumer Financial Protection; and''.

(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: ''The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.''.

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending, and consumer financial products or services and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the

Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1015. COORDINATION.

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services

of the House of Representatives, a report, beginning with the session following the designated transfer date.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered per-

sons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law; and

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—

(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

(2) FUNDING CAP.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to

the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such combined expenditures in fiscal year 2011;

(ii) 11 percent of such combined expenditures in fiscal year 2012; and

(iii) 12 percent of such combined expenditures in fiscal year 2013, and in each year thereafter.

(B) AMOUNT ADJUSTED FOR INFLATION.—The dollar amount referred to in subparagraph (A) shall be adjusted annually, using the percent by which the average urban consumer price index for the quarter preceding the date of the payment differs from the average of that index for the same quarter in the prior year.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities grant-

ed to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.

(4) BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(B) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management

systems requirements and applicable Federal accounting standards.

(D) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(5) AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The

audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such

information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and or-

ganizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) CONSUMER FINANCIAL PROTECTION FUND.—

(1) SEPARATE FUND IN FEDERAL RESERVE BOARD ESTABLISHED.—There is established in the Federal Reserve Board a separate fund, to be known as the ''Consumer Financial Protection Fund'' (referred to in this section as the ''Bureau Fund'').

(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—The Bureau may request the Board of Governors to invest the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

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

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

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The

compensation of Director and other employees of the Bureau and all other expenses thereof may be paid from obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

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

(d) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve Board a fund to be known as the ''Consumer Financial Protection Civil Penalty Fund'' (referred to in this subsection as the ''Civil Penalty Fund''). If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit

into the Civil Penalty Fund, the amount of the penalty collected.

(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.

SEC. 1018. EFFECTIVE DATE.

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

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law

for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers, and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the Federal con-

sumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule;

(B) the Bureau shall consult with the prudential regulators, or other Federal agencies, as appropriate, prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or lim-

iting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered person;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered person engages; and

(iii) existing provisions of law which are applicable to the consumer financial

product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—Notwithstanding any other provisions of Federal law, to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) REPORTS.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each cal-

endar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(4) COLLECTION OF INFORMATION.—In conducting research on the offering and provision of consumer financial products or services, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of persons operating in consumer financial services markets. In order to gather such information, the Bureau may—

(A) gather and compile information from examination reports concerning covered persons or service providers, assessment of consumer complaints, surveys and interviews of covered persons and consumers, and review of available databases;

(B) require persons to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe, by rule or order, annual or special reports, or answers in writing to specific questions, furnishing such information as the Bureau may require; and

(C) make public such information obtained by the Bureau under this section, as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(5) CONFIDENTIALITY RULES.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(A) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having

jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(B) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over covered person or

service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(6) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

(e) INFORMATION GATHERING.—In conducting any monitoring or assessment required by this section, the Bureau may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

(a) REVIEW OF BUREAU REGULATIONS.—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial sector of the United States at risk.

(b) PETITION.—

(1) PROCEDURE.—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on financial stability or the safety and soundness of the United States banking system; and

(B) files the petition with the Council not later than 10 days after the date on which the regulation has been published in the Federal Register.

(2) PUBLICATION.—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) STAYS AND SET ASIDES.—

(1) STAY.—

(A) IN GENERAL.—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) EXPIRATION.—A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).

(2) NO ADVERSE INFERENCE.—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) VOTE.—

(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of ⅔ of the members of the Council then serving.

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by

the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(4) DECISIONS TO SET ASIDE.—

(A) EFFECT OF DECISION.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

(ii) the expiration of a stay issued by the Council under this section.

(C) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

(6) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

(7) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

(8) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

(d) APPLICATION OF OTHER LAW.—Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, United States Code, to a regulation which is the subject of a petition filed under this section.

(e) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

(f) IMPLEMENTING RULES.—The Council shall prescribe procedural rules to implement this section.

SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) SCOPE OF COVERAGE.—

(1) COVERED PERSONS.—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; or

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2).

(2) RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule to define covered persons subject to this section, in accordance with paragraph (1)(B). The Bureau shall issue its initial rule within 1 year of the date of enactment of this Act.

(3) RULES OF CONSTRUCTION.—

(A) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section 1025(a) or 1026(a).

(B) ACTIVITY LEVELS.—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository

institutions or insured credit unions) shall be aggregated.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) RISK-BASED SUPERVISION PROGRAM.—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a) that have been provided or re-

quired to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

(A) IN GENERAL.—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a) and assessment and detection of risks to consumers.

(B) REGISTRATION.—

(i) IN GENERAL.—The Bureau shall prescribe rules regarding registration requirements for persons described in subsection (a).

(ii) EXCEPTION FOR RELATED PERSONS.—The Bureau may not impose requirements under this section regarding the registration of a related person.

(iii) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau shall publicly disclose the registration information about persons described in subsection (a) to facilitate the ability of consumers to identify persons described in subsection (a) registered with the Bureau.

(C) RECORDKEEPING.—The Bureau may require a person described in subsection (a), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(D) REQUIREMENTS CONCERNING OBLIGATIONS.—The Bureau may prescribe rules regarding a person described in subsection (a), to ensure that such persons are legitimate entities

and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(E) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law with respect to any person described in subsection (a)(1)(B).

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal financial consumer law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforce-

ment proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall coordinate enforcement actions for violations of Federal law regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1)(A), or service providers thereto. In carrying out this subparagraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce a Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law, to the extent that a provision of Federal law authorizes the Bureau and another Federal agency to

issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a) under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—This section shall apply to any covered person that is—

(A) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

(B) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

(2) RULE OF CONSTRUCTION.—For purposes of determining total assets under this section and section 1026, the Bureau shall rely on the same regulations and interim methodologies specified in section 312(e).

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of a person described in subsection (a) for purposes of assessing compliance with the requirements of Federal consumer financial law, obtaining information about the activities and compliance systems or procedures of such person, and detecting and assessing risks to consumers and to markets for consumer financial products and services

(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory

authorities, including establishing their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person;

(B) conduct simultaneous examinations of each insured depository institution, insured credit union, or other covered person, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) BANK REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the ''agencies'') are conflicting, an insured depository institution, insured credit union, or other covered person may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person.

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear be-

fore the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person, the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person may jointly agree.

(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in determination by the interagency supervisory panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person instituting an appeal under this paragraph, as well as their officers and employees.

(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of $10,000,000,000 or less.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under

paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) EXAMINATIONS.—

(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator of persons described in subsection (a).

(2) AGENCY COORDINATION.—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of

the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator shall have exclusive authority to enforce compliance with respect to a person described in subsection (a).

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under sec-

tion 1025 to the same extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any Federal consumer financial law.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERING OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods who—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or col-

lection of debt, other than as described in subparagraph (C), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is—

(I) subject to a finance charge; or

(II) payable by written agreement in more than 4 installments.

(C) LIMITATION.—Notwithstanding subparagraph (B), the Bureau may not exercise

any rulemaking, supervisory enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(D) RULE OF CONSTRUCTION.—No provision of this title may be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a person that is licensed or registered as a real

estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any Federal consumer financial law.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph, to the extent that such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any Federal consumer financial law.

(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) MANUFACTURED HOME.—The term ''manufactured home'' has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term ''modular home'' means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this

subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent such person is

engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in paragraph (1)(A)(i) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any Federal consumer financial law.

(e) EXCLUSION FOR ATTORNEYS.—

(1) IN GENERAL.—The Bureau may not exercise any authority to conduct examinations of an attorney licensed by a State, to the extent that the attorney is engaged in the practice of law under the laws of such State.

(2) EXCEPTION FOR ENUMERATED CONSUMER LAWS AND TRANSFERRED AUTHORITIES.—Paragraph (1) shall not apply to an attorney who is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any Federal consumer financial law.

(f) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regu-

lated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) does not apply to any person described in such paragraph, to the extent that such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any Federal consumer financial law.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person

shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is a specified plan or arrangement, or is engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or enforcement authority with respect to services that relate to any specified plan or arrangement.

(B) BUREAU ACTION ONLY PURSUANT TO AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement. Subject to a request made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request, in ac-

cordance with the provisions of this title. A request made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF SERVICES.—To the extent that a person engaged in providing services relating to any specified plan or arrangement is subject to any Federal consumer financial law, subparagraph (A) shall not apply with respect to such Federal consumer financial law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term ''specified plan or arrangement'' means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any Federal consumer financial law.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, ini-

tiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect

to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information,

education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or otherwise subject to any Federal consumer financial law.

(l) INSURANCE.—Except with respect to insurance activities described in section 1002, the Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(m) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (k), a person subject to or described in one or more of such subsections—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(n) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable

to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(o) ATTORNEY GENERAL.—No provision of this title shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(p) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or im-

position of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (a) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

SEC. 1029. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle C—Specific Bureau Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Bureau may take any action authorized under subtitle E to prevent a covered person

or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) RULEMAKING.—The Bureau may prescribe rules identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) CONSULTATION.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

SEC. 1032. DISCLOSURES.

(a) IN GENERAL.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) SAFE HARBOR.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) PUBLIC DISCLOSURE.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model

disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) EXCEPTIONS.—A covered person may not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money

laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other provision of law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Bureau, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) CONSULTATION.—The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 1034. PROHIBITED ACTS.

It shall be unlawful for any person—

(1) to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee or charge in connection with a consumer financial product or service that is not in conformity with this title or applicable rules or orders issued by the Bureau or to engage in any unfair, deceptive, or abusive act or practice, except that no person shall be held to have violated this subsection solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse, as required by Federal financial consumer law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) knowingly or recklessly to provide substantial assistance to another person in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute,

regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or

modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in subsection (b) in the Federal Register notice of a final regulation prescribed pursuant to this section; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this section shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this section shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this section, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States in that State or in State court having jurisdiction over the defendant, to enforce provisions of this title or regulations issued thereunder and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued thereunder with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law, and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to a State chartered entity.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the author-

ity of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any regulation prescribed by the Director under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director, the Bureau, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to fur-

ther coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this title, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) NATIONAL BANK.—The term 'national bank' includes—

"(A) any bank organized under the laws of the United States; and

"(B) any Federal branch established in accordance with the International Banking Act of 1978.

"(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

"(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—State consumer financial laws are preempted, only if—

"(A) application of a State consumer financial law would have a discriminatory effect

on national banks, in comparison with the effect of the law on a bank chartered by that State;

"(B) a determination regarding preemption of a State consumer financial law is in accordance with the legal standard of the decision of the Supreme Court in Barnett Bank v. Nelson, 517 U.S. 25 (1996), and such determination may be made by a court or by regulation or order of the Comptroller of the Currency, in accordance with applicable law, on a case-by-case basis, and any such determination by a court shall comply with the standards set forth in subsection (d), with the court making the finding under subsection (d), de novo; or

"(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

"(2) SAVINGS CLAUSE.—This title does not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

"(3) CASE-BY-CASE BASIS.—

"(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a deter-

mination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

"(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

"(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

"(5) STANDARDS OF REVIEW.—

"(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title shall assess the validity of such determinations, depending upon the thoroughness evident in the agency's consideration, the validity of the reasoning of the agency, the consistency with other

valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

"(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

"(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

"(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents, significantly interferes with, or materially

impairs the ability of a national bank to engage in the business of banking.

"(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe a regulation or order pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Director of the Bureau of Consumer Financial Protection, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

"(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

"(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register an-

nouncing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

"(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to propose to continue, amend, or rescind any determination that a provision of Federal law preempts a State consumer financial law, and the reasons there for.

"(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is

chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

"(g) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

"(h) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

"Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.".

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

"(i) CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

"(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).".

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

"(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

"(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under section 4 and 5, this Act does not occupy the field in any area of State law.".

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

"6. State law preemption standards for Federal savings associations and subsidiaries clarified.".

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

"(j) VISITORIAL POWERS.—

"(1) IN GENERAL.—No provision of this title which relates to visitorial powers to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction, as authorized under section 5240(a)—

"(A) to enforce any applicable provision of Federal or State law, as authorized by such law; or

"(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

"(2) PRIOR CONSULTATION WITH OCC REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Comptroller of the Currency before acting under paragraph (1).

"(k) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from

enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—

''(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

''(A) to enforce any applicable provision of Federal or State law, as authorized by such law; or

''(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any Federal savings association.

''(2) PRIOR CONSULTATION WITH OCC REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with

the Comptroller of the Currency before acting under paragraph (1).

''(d) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms ''civil investigative demand'' and ''demand'' mean any demand issued by the Bureau.

(2) BUREAU INVESTIGATION.—The term ''Bureau investigation'' means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(3) BUREAU INVESTIGATOR.—The term ''Bureau investigator'' means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(4) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by the Bureau.

(5) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investiga-

tion and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within

which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand and any enforcement petition filed under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition

filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) RETURN RECEIPTS.—In the case of service by registered or certified mail, such re-

turn shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the posses-

sion, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH OR AFFIRMATION.—Any Bureau investigator before whom oral testimony is to be taken shall put the witness under oath or affirmation, and shall personally, or by any individual acting under the direction of and in the presence of the

Bureau investigator, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the Bureau investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney of that person, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau in-

vestigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, in-

cluding the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be

accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The Bureau investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the Bureau investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Bureau investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Bureau may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil inves-

tigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for

an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions

of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or rule promulgated by the Bureau.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to

enter such order or orders as may be required to carry out the provisions of this section.

(2) APPEAL.—Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any rules prescribed by the Bureau under this title; and

(2) any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 1024, 1025, and 1026, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to

have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is

stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify,

terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the

order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Bureau may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending comple-

tion of such proceedings. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the residence or principal office or place of business of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person

under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court

shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law the Bureau may, subject to sections 1024, 1025, and 1026, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the Bureau.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any enumerated consumer law, any Federal consumer financial law.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—For purposes of this section, an action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) BUREAU AUTHORITY.—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under the Federal consumer financial law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) RELIEF.—Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any person that recklessly

engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

(3) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (2), the Bureau or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) NOTICE AND HEARING.—No civil penalty may be assessed under this subsection with respect to a violation of this title, any enumerated consumer law, or any rule or order prescribed by the Bureau, unless—

(A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

If the Bureau obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Bureau shall have the power to transmit such evidence to the At-

torney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted or caused to be filed or instituted any proceeding under any enumerated consumer law or any provision of Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(c) PROCEDURES AND TIMETABLES.—

(1) COMPLAINT.—

(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise

discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of —

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the

complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notifi-

cation of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) PENALTIES.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant. If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) PENALTY FOR FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

(D) DE NOVO REVIEW.—

(i) FAILURE OF THE SECRETARY TO ACT.—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this

subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) PROCEDURES.—A proceedings under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(II) the amount of back pay, with interest; and

(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall

not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(D) MANDAMUS PROCEEDINGS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or

enforceable if it requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a) (4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term ''consumer financial protection functions'' means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the offering or provision of consumer financial products or services; and

(2) the terms ''transferor agency'' and ''transferor agencies'' mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) BOARD OF GOVERNORS AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection func-

tions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) COMPTROLLER AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) DIRECTOR AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) CORPORATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), all consumer financial protection functions of the Federal Trade Commission are transferred to the Bureau.

(B) COMMISSION AUTHORITY.—Except as provided in subparagraph (C), the Bureau shall have all powers and duties that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

(C) CONTINUATION OF CERTAIN COMMISSION AUTHORITIES.—Notwithstanding subparagraphs (A) and (B), the Federal Trade Commission shall continue to have authority to enforce, and issue rules with respect to—

(i) the Credit Repair Organizations Act (15 U.S.C. 1679 et seq.);

(ii) section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(iii) the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) are transferred to the Bureau.

(B) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974, and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, on the day before the designated transfer date.

(c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAMINATION AND ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (b) do not affect the authority of the agencies identified in subsection (b) from conducting examinations or initiating and maintaining enforcement pro-

ceedings in accordance with sections 1024, 1025, and 1026.

(d) TERMINATION OF AUTHORITY OF TRANSFEROR AGENCIES TO COLLECT FEES FOR CONSUMER FINANCIAL PROTECTION PURPOSES.—Authorities of the agencies identified in subsection (b) to assess and collect fees to cover the cost of conducting consumer financial protection functions shall terminate on the day before the designated transfer date.

(e) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 1061; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 18 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 18 months after the date of enactment of this Act;

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

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

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 24 months after the date of enactment of this Act.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection func-

tion of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection func-

tion of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection func-

tion of the Federal Trade Commission transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Trade Commission as a party to any such proceeding as of the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

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

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection func-

tion of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection func-

tion of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or

the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) or the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of the Department of Housing and Urban Development transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the

Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the Bureau.

(i) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (g) that will be enforced by the Bureau; and

(2) shall publish a list of such rules in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board

of Governors that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors

of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the

Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

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

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

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

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

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

(c) TRANSFER OF FUNCTION.—

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

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

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Department of Housing and Urban Development shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Bureau from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the des-

ignated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area, as defined by the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau—

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

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

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any ge-

ographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a ''major reorganization'' for pur-

poses of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have

been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period be-

ginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in

subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the Bureau.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the

Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—Notwithstanding any other provision of law, and subject to the terms and conditions of this section, a separate account in the Federal Reserve System retirement plan shall be established for Bureau employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be trans-

ferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Bureau shall deposit into the account established under clause (i) the employer contributions that the Bureau makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Bureau shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the

employee was enrolled in on the day before the designated transfer date; and

(ii) the term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

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

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in

the benefit program to the employee, as required under that program or negotiated agreements.

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

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

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

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

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

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the

Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

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

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and

8714c of title 5, United States Code, or in a life insurance plan established by the Bureau, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor

agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

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

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home

loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional

incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

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

SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of the Treasury such sums as are necessary to carry out this section.

(2) APPORTIONMENT AND RESTRICTIONS.—Notwithstanding any other provision of law,

amounts appropriated under paragraph (1) shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

SEC. 1067. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a train-

ing and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle G—Regulatory Improvements

SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain a record of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—Customer addresses shall be geo-coded for the collection of data regarding the census tracts of the residences or business locations of customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall record

whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—Each financial institution shall make publicly available on an annual basis, from information collected under this section—

(i) the address and census tract of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to the financial institution;

(ii) the type of deposit account, including whether the account was a checking or savings account; and

(iii) data on the number and dollar amount of the accounts, presented by census tract location of the residential and commercial customer.

(B) PROTECTION OF IDENTITY.—In making data publicly available, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau, or to a Federal banking agency, in accordance with rules prescribed by the Bureau.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under rules prescribed by the Bureau.

(d) BUREAU USE.—The Bureau—

(1) shall use the data on branches and deposit accounts acquired under this section as part of the examination of a covered person as part of an examination under this title;

(2) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(3) may use the data for any other purpose as permitted by law.

(e) RULES AND GUIDANCE.—The Bureau shall prescribe such rules and issue guidance as may be necessary

to carry out, enforce, and compile data pursuant to this section. The Bureau shall prescribe rules regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section, and shall issue guidance to financial institutions regarding measures to facilitate compliance with this section and the requirements of rules prescribed thereunder.

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

(1) DEPOSIT ACCOUNT.—The term ''deposit account'' includes any checking account, savings account, credit union share account, and other type of account as defined by the Bureau.

(2) FINANCIAL INSTITUTION.—The term ''financial institution''—

(A) has the meaning given to the term ''insured depository institution'' in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1072. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

"SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.

"(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned and minority-owned small businesses.

"(b) INFORMATION GATHERING.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

"(1) inquire whether the small business is a women- or minority-owned small business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

"(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

"(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

"(d) NO ACCESS BY UNDERWRITERS.—

"(1) LIMITATION.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

"(2) LIMITED ACCESS.—If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on this basis of such information.

"(e) FORM AND MANNER OF INFORMATION.—

"(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information

provided by any loan applicant pursuant to a request under subsection (b).

"(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

"(A) the number of the application and the date on which the application was received;

"(B) the type and purpose of the loan or other credit being applied for;

"(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

"(D) the type of action taken with respect to such application, and the date of such action;

"(E) the census tract in which is located the principal place of business of the small business loan applicant;

"(F) the gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application;

"(G) the race and ethnicity of the principal owners of the business; and

"(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

"(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

"(4) DISCRETION TO DELETE OR MODIFY PUBLICLY-AVAILABLE DATA.—The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a compelling privacy interest.

"(f) AVAILABILITY OF INFORMATION.—

"(1) SUBMISSION TO BUREAU.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau.

"(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be—

"(A) retained for not less than 3 years after the date of preparation;

"(B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau;

"(C) annually made available to the public generally by the Bureau, in such form and in such manner as is determined appropriate by the Bureau.

"(3) COMPILATION OF AGGREGATE DATA.—The Bureau may, at its discretion—

"(A) compile and aggregate data collected under this section for its own use; and

"(B) make public such compilations of aggregate data.

"(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FINANCIAL INSTITUTION.—The term 'financial institution' means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

"(2) MINORITY-OWNED SMALL BUSINESS.—The term 'minority-owned small business' means a small business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(3) WOMEN-OWNED SMALL BUSINESS.—The term 'women-owned small business' means a business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

"(4) MINORITY.—The term 'minority' has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

"(5) SMALL BUSINESS LOAN.—The term 'small business loan' shall be defined by the Bureau, which may take into account—

"(A) the gross revenues of the borrower;

"(B) the total number of employees of the borrower;

"(C) the industry in which the borrower has its primary operations; and

"(D) the size of the loan.

"(h) BUREAU ACTION.—

"(1) IN GENERAL.—The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

"(2) EXCEPTIONS.—The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.

"(3) GUIDANCE.—The Bureau shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for purposes of this section.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) in paragraph (3), by striking ''or'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (4), the following:

''(5) to make an inquiry under section 704B, in accordance with the requirements of that section.''.

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704A the following new item:

''704B. Small business loan data collection.''.

(d) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1073. GAO STUDY ON THE EFFECTIVENESS AND IMPACT OF VARIOUS APPRAISAL METHODS.

(a) IN GENERAL.—The Government Accountability Office shall conduct a study on the effectiveness and impact of various appraisal methods, including the cost approach, the comparative sales approach, the income approach, and others that may be available.

(b) STUDY.—Not later than—

(1) one year after the date of enactment of this Act, the Government Accountability Office shall submit a study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives;

(2) 90 days after the date of enactment of this Act, the Government Accountability Office shall provide a report on the status of the study and any preliminary findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) CONTENT OF STUDY.—The study required by this section shall include an examination of—

(1) the prevalence, alone or in combination, of these approaches in purchase-money and refinance mortgage transactions;

(2) the accuracy of the various approaches in assessing the property as collateral;

(3) whether and how the approaches contributed to price speculation in the previous cycle;

(4) the costs to consumers of these approaches;

(5) the disclosure of fees to consumers in the appraisal process;

(6) to what extent such approaches may be influenced by a conflict of interest between the mortgage lender and the appraiser and the mechanism by which the lender selects and compensates the appraiser; and

(7) the suitability of appraisal approaches in rural versus urban areas.

SEC. 1074. PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et. seq.) is amended by inserting after section 129A (15 U.S.C. 1639A) the following new section:

"§ 129B. Prohibition on certain prepayment penalties

"(a) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not a qualified mortgage may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

"(b) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—

"(1) IN GENERAL.—A qualified mortgage may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the

principal after the loan is consummated in excess of—

"(A) during the 1-year period beginning on the date on which the loan is consummated, an amount equal to 3 percent of the outstanding balance on the loan;

"(B) during the 1-year period beginning after the period described in subparagraph (A), an amount equal to 2 percent of the outstanding balance on the loan; and

"(C) during the 1-year period beginning after the 1-year period described in subparagraph (B), an amount equal to 1 percent of the outstanding balance on the loan.

"(2) PROHIBITION.—After the end of the 3-year period beginning on the date on which the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

"(c) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan, without offering to the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

"(d) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a residential mortgage loan—

"(1) to structure a loan transaction as an open end consumer credit plan or another form of loan for the purpose and with the intent of evading the provisions of this section; or

"(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this section.

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

"(1) PREPAYMENT PENALTY.—The term 'prepayment penalty' means any penalty for paying all or part of the principal on an extension of credit before the date on which the principal is due, including a computation of a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined in section 933(d) of the Housing and Community Development Act of 1992 (15 U.S.C. 4 1615(d)).

"(2) RESIDENTIAL MORTGAGE LOAN.—The term 'residential mortgage loan' means any consumer credit transaction that is secured by a mort-

gage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

"(3) QUALIFIED MORTGAGE.—The term 'qualified mortgage' means any residential mortgage loan—

"(A) that does not have an adjustable rate;

"(B) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal Banking Agencies;

"(C) that does not provide for a repayment schedule that results in negative amortization at any time;

"(D) for which the terms are fully amortizing and which does not result in a balloon payment, where a `balloon payment' is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

"(E) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

"(i) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

"(ii) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section

305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

"(iii) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

"(F) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

"(G) for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

"(H) that does not cause the consumer's total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of the consumer's monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under subsection (g), and such rules shall also take into consideration the consumer's income available to pay regular expenses after payment of all installment and revolving debt;

"(I) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where 'points and fees' means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4));

"(J) for which the term of the loan does not exceed 30 years, except as such term may be extended under subsection (g); and

"(K) any reverse mortgage that is insured by the Federal Housing Administration or complies with the condition established in subparagraph (A)(iv).

"(4) AVERAGE PRIME OFFER RATE.—The term 'average prime offer rate' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low risk pricing characteristics.

"(f) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

"(1) shall publish, and update at least weekly, average prime offer rates;

"(2) may publish multiple rates based on varying types of mortgage transactions; and

"(3) shall adjust the thresholds of 1.50 percentage points in paragraph (e)(3)(E)(i), 2.50 percentage points in paragraph (e)(3)(E)(ii), and 3.50 percentage points in paragraph (e)(3)(E)(iii), as necessary to reflect significant changes in market conditions and to effectuate the purposes of this section.

"(g) REGULATIONS.—

"(1) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations to carry out the purposes of this subsection.

"(2) REVISION OF SAFE HARBOR CRITERIA.—

"(A) IN GENERAL.—The Federal banking agencies may jointly prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance with such section.

"(B) LOAN DEFINITION.—The following agencies shall, in consultation with the Federal banking agencies, prescribe rules defining the types of loans they insure, guarantee or administer, as the case may be, that are qualified mortgages for purposes of section upon a finding that such rules are consistent with the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections—

"(i) the Department of Housing and Urban Development, with regard to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

"(ii) the Secretary of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs;

"(iii) the Secretary of Agriculture, with regard loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h);

"(iv) the Federal Housing Finance Agency, with regard to loans meeting the conforming loan standards of the Federal

National Mortgage Corporation or the Federal Home Loan Mortgage Corporation; and

"(v) the Rural Housing Service, with regard to loans insured by the Rural Housing Service.

"(3) IMPLEMENTATION.—Regulations required or authorized to be prescribed under this section—

"(A) shall be prescribed in final form before the end of the 12-month period beginning on the date of enactment of this section; and

"(B) shall take effect not later than 18 months after the date of the enactment of this section.".

(b) PREPAYMENT PENALTIES PROVISION.—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

Subtitle H—Conforming Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

The Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting "and the Bureau of Consumer Financial Protection" after

"Board of Governors of the Federal Reserve System";

(2) in section 8G(c), by adding at the end the following: "For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System."; and

(3) in in section 8G(g)(3), by inserting "and the Bureau of Consumer Financial Protection" after "Board of Governors of the Federal Reserve System" the first place that term appears.

SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

"(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.".

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking "1974" and all that follows through "described and defined" and inserting the following: "1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined"; and

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after "transactions made" each place that term appears "on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,";

(ii) in paragraph (2), by striking ''and'' at the end;

(iii) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following new paragraph:

''(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.'';

(B) by striking subsection (c) and inserting the following:

''(c) PREEMPTION OF STATE LAW.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that pro-

hibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.''; and

(C) by adding at the end the following:

''(d) BUREAU ACTIONS.—The Bureau of Consumer Financial Protection shall—

''(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

''(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

''(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

''(e) DESIGNATED TRANSFER DATE.—As used in this section, the term 'designated transfer date' means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of l982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'', except in section 918 (as so designated by the Credit Card Act of 2009) (15 U.S.C. 1693o);

(2) in section 903 (15 U.S.C. 1693a), by striking paragraph (3) and inserting the following:

''(3) the term 'Bureau' means the Bureau of Consumer Financial Protection;'';

(3) in section 916(d) (as so designated by section 401 of the Credit CARD Act of 2009) (15 U.S.C. 1693m)—

(A) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''BUREAU OF CONSUMER FINANCIAL PROTECTION''; and

(B) by striking ''Federal Reserve System'' and inserting ''Bureau of Consumer Financial Protection''; and

(4) in section 918 (as so designated by the Credit Card Act of 2009) (15 U.S.C. 1693o)—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;''; and

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal

Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.''.

SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

''(c) The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

"SEC. 703. PROMULGATION OF REGULATIONS BY THE BUREAU.";

(B) by striking "(a) REGULATIONS.—";

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively; and

(E) in subsection (c), as so redesignated, by striking "paragraph (2)" and inserting "subsection (b)";

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking "Compliance" and inserting "Except as otherwise provided by subtitle B of the Consumer Protection Financial Protection Act of 2010"; and

(ii) by striking paragraph (2) and inserting the following:

"(2) Subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.";

(B) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency

under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(C) in subsection (d) by striking ''Board'' and inserting ''Bureau''; and

(5) in section 706(e) (15 U.S.C. 1691e(e))—

(A) in the subsection heading—

(i) by striking ''BOARD'' each place that term appears and inserting ''BUREAU''; and

(ii) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''BUREAU OF CONSUMER FINANCIAL PROTECTION''; and

(B) by striking ''Federal Reserve System'' and inserting ''Bureau of Consumer Financial Protection''.

SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENT TO SECTION 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after ''Board'' the following '', jointly with the Director of the Bureau of Consumer Financial Protection,''.

(b) AMENDMENTS TO SECTION 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in subsection (f), the following: '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) in subsection (f), by striking ''Board.'' each place that term appears and inserting the following: ''Board, jointly with the Director of the Bureau of Consumer Financial Protection.''.

(c) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in the heading for section 605(f)(1), the following: '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) in subsection (f)(1), in the paragraph heading, by inserting ''AND BUREAU''after ''BOARD''.

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after ''Board'' the following '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) by striking subsection (e) and inserting the following:

''(e) CONSULTATIONS.—In prescribing regulations under subsection (a) and (b) of this section, the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Fed-

eral Deposit Insurance Corporation, and the National Credit Union Administration Board.''.

SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking ''Board'' each place that term appears and inserting ''Bureau''.

SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT.

(a) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

''(w) The term 'Bureau' means the Bureau of Consumer Financial Protection.''; and

(2) except as otherwise specifically provided in this subsection—

(A) by striking ''Federal Trade Commission'' each place that term appears and inserting ''Bureau'';

(B) by striking ''FTC'' each place that term appears and inserting ''Bureau'';

(C) by striking ''the Commission'' each place that term appears and inserting ''the Bureau''; and

(D) by striking ''The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly'' each place that term appears and inserting ''The Bureau shall'';

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Bureau'';

(4) in section 604(g) (15 U.S.C.1681b(g))—

(A) in paragraph (3), by striking subparagraph (C) and inserting the following:

''(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau (consistent with the enforcement authorities prescribed under section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).'';

(B) by striking paragraph (5) and inserting the following:

''(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

''(A) REGULATIONS REQUIRED.—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.''; and

(C) by striking paragraph (6);

(5) in section 611(e)(2) (15 U.S.C.1681i(e)), by striking paragraph (2) and inserting the following:

''(2) EXCLUSION.—Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).'';

(6) in section 615(h)(6) (15 U.S.C. 1681m(h)(6)), by striking subparagraph (A) and inserting the following:

"(A) RULES REQUIRED.—The Bureau shall prescribe rules to carry out this subsection.";

(7) in section 621 (15 U.S.C.1681s)—

(A) by striking subsection (a) and inserting the following:

"(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

"(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission, with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any

requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal

Trade Commission Act as though the applicable terms and provisions of such Act are part of this title.

"(2) PENALTIES.—

"(A) KNOWING VIOLATIONS.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

"(B) DETERMINING PENALTY AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

"(C) LIMITATION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section

623(a)(1), unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.";

(8) by striking subsection (b) and inserting the following:

"(b) ENFORCEMENT BY OTHER AGENCIES.—

"(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 615(d) shall be enforced under—

"(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

"(i) any national bank, and any Federal branch or Federal agency of a foreign

bank, by the Office of the Comptroller of the Currency;

"(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

"(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

"(B) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

"(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

"(D) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

"(E) the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

"(F) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act, by the Secretary of Agriculture, with respect to any activities subject to that Act;

"(G) the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission; and

"(H) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that subject to the jurisdiction of the Securities and Exchange Commission.

"(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this

title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).";

(9) by striking subsection (e) and inserting the following:

"(e) REGULATORY AUTHORITY.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this Act. The regulations prescribed by the Bureau under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section."; and

(10) in section 623 (15 U.S.C.1681s–2)—

(A) in subsection (a)(7), by striking subparagraph (D) and inserting the following:

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial in-

stitution to use any such model form prescribed by the Bureau.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format."; and

(B) by striking subsection (e) and inserting the following:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

"(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate informa-

tion relating to consumers that has been furnished to consumer reporting agencies.''.

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 note) is amended by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3), shall be prescribed, as described in paragraph (2), by—

''(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

''(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

''(C) the Bureau, with respect to other entities subject to this Act.''.

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by striking ''Commission'' each place that term appears and inserting ''Bureau'';

(2) in section 803 (15 U.S.C. 1692a)—

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

''(1) The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

''(a) FEDERAL TRADE COMMISSION.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with this title shall be enforced by the Federal Trade Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under subsection (b). For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Com-

mission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(B) in subsection (b)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;''; and

(4) in subsection (d), by striking ''Neither the Commission'' and all that follows through the end of the subsection and inserting the following: ''The Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this Act.''.

SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

"(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency."; and

(2) in section 43 (2 U.S.C. 1831t)—

(A) in subsection (c), by striking "Federal Trade Commission" and inserting "Bureau";

(B) in subsection (d), by striking "Federal Trade Commission" and inserting "Bureau";

(C) in subsection (e)—

(i) in paragraph (2), by striking "Federal Trade Commission" and inserting "Bureau"; and

(ii) by adding at the end the following new paragraph:

"(5) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection."; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:

"(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission."; and

(ii) in paragraph (2), by striking subparagraph (C) and inserting the following:

"(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any

violation of this section that is alleged in that complaint.''.

SEC. 1091. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 504(a)(1) (15 U.S.C. 6804(a)(1))—

(A) by striking ''The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,'' and inserting ''The Bureau of Consumer Financial Protection and''; and

(B) by striking '', and the Federal Trade Commission'';

(2) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking ''This subtitle'' and all that follows through ''as follows:'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Com-

mission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:'';

(B) in paragraph (1)—

(i) in subparagraph (B), by inserting ''and'' after the semicolon;

(ii) in subparagraph (C), by striking ''; and'' and inserting a period; and

(iii) by striking subparagraph (D); and

(C) by adding at the end the following:

''(8) Under the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau under that Act, but not with respect to the standards under section 501.''; and

(3) in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting '', other than the Bureau of Consumer Financial Protection,'' after ''subsection (a)''.

SEC. 1092. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) except as otherwise specifically provided in this section, by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

''(1) the term 'Bureau' means the Bureau of Consumer Financial Protection;'';

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—

(i) in paragraph (4), by inserting ''age,'' before ''and gender'';

(ii) in paragraph (3), by striking ''and'' at the end; and

(iii) in paragraph (4), by striking the period at the end and inserting the following: ''; and

''(5) the number and dollar amount of mortgage loans grouped according to measurements of—

"(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

"(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

"(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

"(D) such other information as the Bureau may require; and

"(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

"(A) the value of the real property pledged or proposed to be pledged as collateral;

"(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

"(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other

than fully amortizing payments during any portion of the loan term;

"(D) the actual or proposed term in months of the mortgage loan;

"(E) the channel through which application was made, including retail, broker, and other relevant categories;

"(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in Section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

"(G) as the Bureau may determine to be appropriate, a universal loan identifier;

"(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

"(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe, except that the Bureau shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

"(J) such other information as the Bureau may require.";

(B) in subsection (i), by striking "subsection (b)(4)" and inserting "subsections (b)(4), (b)(5), and (b)(6)";

(C) in subsection (j)—

(i) in paragraph (1), by striking "(as" and inserting "(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise";

(ii) by striking paragraph (3) and inserting the following:

"(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require"; and

(iii) in paragraph (2)(A), by striking "in the format in which such information is maintained by the institution" and inserting "in such formats as the Bureau may require";

(D) in subsection (m), by striking paragraph (2) and inserting the following:

"(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require";

(E) by striking subsection (h) and inserting the following:

"(h) SUBMISSION TO AGENCIES.—

"(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in cooperation with other appropriate regulators described in paragraph (2), shall develop regulations that—

"(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public;

"(B) require the collection of data required to be disclosed under subsection (b) with re-

spect to loans sold by each institution reporting under this title;

"(C) require disclosure of the class of the purchaser of such loans; and

"(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

"(2) OTHER APPROPRIATE AGENCIES.—The appropriate regulators described in this paragraph are—

"(A) the Office of the Comptroller of the Currency (hereafter referred to in this Act as 'Comptroller') for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

"(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

"(C) the National Credit Union Administration Board for credit unions; and

"(D) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in subparagraphs (A) through (C)."; and

(F) by adding at the end the following:

"(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraphs (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.";

(4) in section 305 (12 U.S.C. 2804)—

(A) by striking subsection (b) and inserting the following:

"(b) POWERS OF CERTAIN OTHER AGENCIES.—

"(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced under—

"(A) section 8 of the Federal Deposit Insurance Act, in the case of—

"(i) any national bank, and any Federal branch or Federal agency of a foreign bank, by the Office of the Comptroller of the Currency;

"(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or

(C), by the Federal Deposit Insurance Corporation;

"(B) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

"(C) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

"(D) other lending institutions, by the Secretary of Housing and Urban Development.

"(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."; and

(B) by adding at the end the following:

"(d) OVERALL ENFORCEMENT AUTHORITY OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to

exercise principal authority to examine and enforce compliance by any person with the requirements of this title.''; (5) in section 306 (12 U.S.C. 2805(b)), by striking subsection (b) and inserting the following:

''(b) EXEMPTION AUTHORITY.—The Bureau may, by regulation, exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 8 of the Federal Deposit Insurance Act, in the case of national banks and savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.''; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

''SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

''(a) IN GENERAL.—

''(1) CONSULTATION REQUIRED.—The Director of the Bureau of Consumer Financial Protection,

with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons, as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

''(3) CONTRACTING AUTHORITY.—The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

''(b) RECOMMENDATIONS TO CONGRESS.—The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this title.''.

SEC. 1093. AMENDMENTS TO THE HOME OWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(4) subtitle E of title X of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection.''; and

(2) in subsection (b)(2), by inserting before the period at the end the following: '', subject to subtitle B of the Consumer Financial Protection Act of 2010''.

SEC. 1094. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.

The Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended—

(1) in section 158(a), by striking ''Consumer Advisory Council of the Board'' and inserting ''Advisory Board to the Bureau''; and

(2) by striking ''Board'' each place that term appears and inserting ''Bureau''.

SEC. 1095. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8) is amended—

(1) in subsection (a), by striking paragraph (1) and inserting the following:

''(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010.'';

(2) by striking paragraphs (2) through (4) and inserting the following:

"(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection."; and

(3) in subsection (b)—

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

"(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in a practices that violates such rule, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

"(A) to enjoin that practice;

"(B) to enforce compliance with the rule;

"(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

"(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.";

(B) in paragraphs (2) and (3), by striking "the primary Federal regulator" each time the term appears and inserting "the Bureau of Consumer Financial Protection or the Commission, as appropriate";

(C) in paragraph (3), by inserting "and subject to subtitle B of the Consumer Financial Protection Act of 2010" after "-paragraph (2)"; and

(D) in paragraph (6), by striking "the primary Federal regulator" each time the term appears and inserting "the Bureau of Consumer Financial Protection or the Commission".

SEC. 1096. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking ''and'' at the end;

(B) in paragraph (8), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(9) the term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily un-

derstandable language to simplify the technical nature of the disclosures.'';

(B) by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(C) by striking ''form'' each place that term appears and inserting ''forms'';

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking ''Secretary'' each place that term appears, and inserting ''Bureau''; and

(B) in subsection (a), by striking the first sentence and inserting the following: ''The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.'';

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking ''Secretary'' and inserting ''Bureau''; and

(B) by striking '', by regulations that shall take effect not later than April 20, 1991,'';

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking ''Secretary'' and inserting ''Bureau'';

(6) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting ''BUREAU AND'' before ''SECRETARY''; and

(B) by striking paragraph (4), and inserting the following:

''(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.''.

(7) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking ''Secretary'' and inserting ''Bureau'';

(8) in section 16 (12 U.S.C. 2614), by inserting ''the Bureau,'' before ''the Secretary'';

(9) in section 18 (12 U.S.C. 2616), by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(10) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking ''**SECRETARY**'' and inserting ''**BUREAU**'';

(B) by striking ''Secretary'' each place that term appears and inserting ''Bureau'';

(C) in subsection (b), by inserting ''the Bureau'' before ''the Secretary''; and

(D) in subsection (c), by inserting ''or the Bureau'' after ''the Secretary'' each time that term appears.

SEC. 1097. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101—

(A) in paragraph (6)—

(i) in subparagraph (A), by inserting ''and'' after the semicolon;

(ii) in subparagraph (B), by striking ''and'' at the end; and

(iii) by striking subparagraph (C); and

(B) in paragraph (7), by striking subparagraph (E), and inserting the following:

''(E) the Bureau of Consumer Financial Protection;'';

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking ''and the Commodity Futures Trading Commission is permitted'' and inserting ''the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted''; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

''(r) DISCLOSURE TO THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Nothing in this title shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.''.

SEC. 1098. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking ''a Federal banking agency'' each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting ''the Bureau'';

(2) by striking ''Federal banking agencies'' each place that term appears and inserting ''Bureau''; and

(3) by striking ''Secretary'' each place that term appears and inserting ''Director'';

(4) in section 1503 (12 U.S.C. 5102)—

(A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;

(B) by striking paragraph (1) and inserting the following:

''(1) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.

''(2) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.''; and

(C) by striking paragraph (10), as so redesignated by this section, and inserting the following:

''(10) DIRECTOR.—The term 'Director' means the Director of the Bureau of Consumer Financial Protection.''; and

(5) in section 1507 (12 U.S.C. 5106)—

(A) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010."; and

(ii) in paragraph (2)—

(I) by striking "appropriate Federal banking agency and the Farm Credit Administration" and inserting "Bureau"; and

(II) by striking "employees's identity" and inserting "identity of the employee"; and

(B) in subsection (b), by striking "through the Financial Institutions Examination Council, and the Farm Credit Administration", and inserting "and the Bureau of Consumer Financial Protection";

(6) in section 1508 (12 U.S.C. 5107)—

(A) by striking the section heading and inserting the following:

"SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTECTION BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM."; and

(B) by adding at the end the following:

"(f) REGULATION AUTHORITY.—

"(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

"(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.";

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

"SEC. 1510. FEES.

''The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.'';

(8) by striking section 1513 (12 U.S.C. 5112) and inserting the following:

"SEC. 1513. LIABILITY PROVISIONS.

''The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.''; and

(9) in section 1514 (12 U.S.C. 5113) in the section heading, by striking ''**UNDER HUD BACKUP**

LICENSING SYSTEM'' and inserting ''**BY THE BUREAU**''.

SEC. 1099. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 103 (5 U.S.C. 1602)—

(A) by redesignating subsections (b) through (bb) as subsections (c) through (cc), respectively; and

(B) by inserting after subsection (a) the following:

''(b) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(2) by striking ''Board'' each place that term appears, other than in section 140(d) and section 108(a), as amended by this section, and inserting ''Bureau'';

(3) by striking ''Federal Trade Commission'' each place that term appears, other than in section 108(c) and section 129(m), as amended by this Act, and other than in the context of a reference to the Federal Trade Commission Act, and inserting ''Bureau'';

(4) in section 105(a) (15 U.S.C. 1604(a)), in the second sentence—

(A) by striking ''Except in the case of a mortgage referred to in section 103(aa), these regulations may contain such'' and inserting ''Except with respect to the provisions of section 129 that apply to a mortgage referred to in section 103(aa), such regulations may contain such additional requirements,''; and

(B) by inserting ''all or'' after ''exceptions for'';

(5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily un-

derstandable language to simplify the technical nature of the disclosures.'';

(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)), by inserting ''all or'' after ''from all or part of this title'';

(7) in section 108 (15 U.S.C. 1607)—

(A) by striking subsection (a) and inserting the following:

''(a) ENFORCING AGENCIES.—Except as otherwise provided in subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) any national bank, and Federal branch or Federal agency of a foreign bank, by the Office of the Comptroller of the Currency;

''(B) any member bank of the Federal Reserve System (other than a national bank), any branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), any commercial lending company owned or controlled by a foreign bank, and organizations operating

under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and an insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

"(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

"(3) the Federal Credit Union Act, by the Director of the National Credit Union Administration, with respect to any Federal credit union;

"(4) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

"(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act; and

"(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association."; and

(B) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the --functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.";

(8) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:

"(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation

of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.''; and

(9) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking ''the Board'' each place that term appears and inserting ''the Bureau''; and

(B) by striking ''The Board'' each place that term appears and inserting ''The Bureau''.

SEC. 1100. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking ''Compliance'' and inserting ''Except as otherwise provided in subtitle B of the Consumer Financial Protection Act of 2010, compliance'';

(B) in paragraph (1)—

(i) in subparagraph (B), by striking ''and'' at the end; and

(ii) by striking subparagraph (C);

(C) in paragraph (2), by striking the period at the end and inserting "; and"; and

(D) by adding at the end, the following:

"(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.";

(3) in section 272(b) (12 U.S.C. 4311(b)), by striking "regulation prescribed by the Board" each place that term appears and inserting "regulation prescribed by the Bureau"; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

"(4) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.".

SEC. 1101. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

"(b) RULEMAKING AUTHORITY.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product

or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

''(c) VIOLATIONS.—Any violation of any rule prescribed under subsection (a)—

''(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

''(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.''.

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended by inserting after ''Commission'' each place that term appears the following: ''or the Bureau of Consumer Financial Protection''.

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is by inserting after ''Commission'' each place that term appears the following: ''or the Bureau of Consumer Financial Protection''.

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

''(d) ENFORCEMENT BY BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of title X of the Consumer Financial Protection Act of 2010.''.

SEC. 1102. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting ''the Bureau of Consumer Financial Protection,'' after ''the Securities and Exchange Commission,''.

(b) COMPARABLE TREATMENT.—Section 3513 of title 44, United States Code, is amended by adding at the end the following:

''(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.''.

SEC. 1103. EFFECTIVE DATE.

The amendments made by sections 1083 through 1103 shall become effective on the designated transfer date.

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

SEC. 1151. FEDERAL RESERVE ACT AMENDMENTS ON EMERGENCY LENDING AUTHORITY.

The third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority) is amended—

(1) by inserting ''(3)(A)'' before ''In unusual'';

(2) by striking ''individual, partnership, or corporation'' the first place that term appears and inserting the following: ''financial market utility that

the Financial Stability Oversight Council determines is, or is likely to become, systemically important, or any program or facility with broad-based eligibility''; (3) by striking ''exchange for an individual or a partnership or corporation'' and inserting ''exchange,''; (4) by striking ''such individual, partnership, or corporation'' and inserting ''such financial market utility that the Financial Stability Oversight Council determines is, or is likely to become, systemically important, or such participant in any program or facility with broad-based eligibility''; (5) by striking ''for individuals, partnerships, corporations'' and inserting ''for any financial market utility that the Financial Stability Oversight Council determines is, or is likely to become, systemically important, or any program or facility with broad-based eligibility''; (6) by striking ''may prescribe.'' and inserting the following: ''may prescribe.

''(B)(i) As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emer-

gency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the collateral for emergency loans is of sufficient quality to protect taxpayers from losses.

"(ii) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.

"(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

"(i) not later than 7 days after providing any loan or other financial assistance under this paragraph, a report that includes—

"(I) the justification for the exercise of authority to provide such assistance;

"(II) the identity of the recipients of such assistance, subject to subparagraph (D);

"(III) the date and amount of the assistance, and form in which the assistance was provided; and

"(IV) the material terms of the assistance, including—

"(aa) duration;

"(bb) collateral pledged and the value thereof;

"(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

"(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

"(ee) the expected costs to the taxpayers of such assistance; and

"(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

"(I) the value of collateral;

"(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

"(III) the expected or final cost to the taxpayers of such assistance.

"(D)(i) The Board shall disclose, not later than 1 year after the date on which assistance was first received under the facility, unless the Board determines that such disclosure likely would reduce the effectiveness of the program or facility in addressing or mitigating the financial market disruptions, financial market conditions, or other unusual and exigent circumstances sought to be addressed or mitigated by the program or facility, or would otherwise have a significant effect on the economic or financial market conditions—

"(I) the identity of the participants in an emergency lending program or facility

commenced under this paragraph after the date of enactment of the Restoring American Financial Stability Act of 2010;

"(II) the amounts borrowed by each participant in any such program or facility; and

"(III) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility within 1 year of the date on which assistance was first received under the program or facility.

"(ii) If the Board determines not to make the disclosures required in clause (i) within 1 year of the date on which a participant first received under a program or facility, then the Board shall—

"(I) provide to the Committee on Banking, Housing and Urban Affairs and the Committee on Financial Services a written report explaining the reasons for delaying the disclosures about such program or facility within 30 days of making such a determination; and

"(II) provide to the Committee on Banking, Housing and Urban Affairs and the Committee on Financial Services each year thereafter a written report explaining the reasons for continuing to delay disclosure, until the disclosures are complete.

"(iii) The disclosures required in clause (i) shall be made not later than 12 months after the effective date of the termination of the facility by the Board.

"(iv) If the Board determines not to make the disclosures required in clause (i), then the Comptroller General shall issue a report to the Committee on Banking, Housing and Urban Affairs and the Committee on Financial Services evaluating whether that determination is reasonable.".

SEC. 1152. REVIEWS OF SPECIAL FEDERAL RESERVE CREDIT FACILITIES.

(a) REVIEWS.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

"(f) REVIEWS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

"(1) DEFINITION.—In this subsection, the term 'credit facility' means any utility, facility, or pro-

gram authorized by the Board of Governors of the Federal Reserve System under the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343), including any special purpose vehicle or other entity established by or on behalf of the Board of Governors or a Federal reserve bank, that is not subject to audit under subsection (e), including—

"(A) the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility;

"(B) the Term Asset-Backed Securities Loan Facility;

"(C) the Primary Dealer Credit Facility;

"(D) the Commercial Paper Funding Facility; and

"(E) the Term Securities Lending Facility.

"(2) AUTHORITY FOR REVIEWS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct reviews, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility,

if the Comptroller General determines that such reviews are appropriate, solely for the purposes of assessing, with respect to a credit facility—

"(A) the operational integrity, accounting, financial reporting, and internal controls of the credit facility;

"(B) the effectiveness of the collateral policies established for the facility in mitigating risk to the relevant Federal reserve bank and taxpayers;

"(C) whether the credit facility inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

"(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility.

"(3) REPORTS AND DELAYED DISCLOSURE.—

"(A) REPORTS REQUIRED.—A report on each review conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such review is completed.

"(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the matters described in paragraph (2) that were reviewed and are the subject of the report, together with such recommendations for legislative or administrative action relating to such matters as the Comptroller General may determine to be appropriate.

"(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

"(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to Congress, the names or identifying details of specific participants in any credit facility, the amounts borrowed by specific participants in any credit facility, or identifying details regarding assets or collateral held by, under, or in connection with any credit facility, and any report provided under subparagraph (A) shall be redacted to ensure that such names and details are not disclosed.

"(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity of the subject participant or the identifying details of the subject assets or collateral.

"(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any report on a credit facility 1 year after the effective date of the termination by the Board of Governors of the authorization for the credit facility.

"(iv) EXCEPTIONS.—The nondisclosure obligation under clause (i) shall not apply to the credit facilities Maiden Lane, Maiden Lane I, and Maiden Lane II.".

(b) ACCESS TO RECORDS.—Section 714(d) of title 31, United States Code, is amended—

(1) in paragraph (2), by inserting "or any person or entity described in paragraph (3)(A)" after "used by an agency";

(2) in paragraph (3), by inserting "or (f)" after "subsection (e)" each place that term appears; and

(3) in paragraph (3)(B), by adding at the end the following: ''The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall provide to any person or entity described in subparagraph (A) a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out a review or examination under this subsection.''.

SEC. 1153. PUBLIC ACCESS TO INFORMATION.

Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended by adding at the end the following:

''(c) PUBLIC ACCESS TO INFORMATION.—The Board shall place on its home Internet website, a link entitled 'Audit', which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months following the date of release of the relevant information, including—

''(1) the reports prepared by the Comptroller General under section 714 of title 31, United States Code;

"(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 11B;

"(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under the third undesignated paragraph of section 13 (relating to emergency lending authority); and

"(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.".

SEC. 1154. LIQUIDITY EVENT DETERMINATION.

(a) DETERMINATION AND WRITTEN RECOMMENDATION.—

(1) DETERMINATION REQUEST.—The Secretary may request the Council and the Board of Governors to determine whether a liquidity event exists that warrants use of the guarantee program authorized under section 1155.

(2) REQUIREMENTS OF DETERMINATION.—Any determination pursuant to paragraph (1) shall—

(A) be written; and

(B) contain an evaluation of the evidence that—

(i) a liquidity event exists;

(ii) failure to take action would have serious adverse effects on financial stability or economic conditions in the United States; and

(iii) actions authorized under section 1155 are needed to avoid or mitigate potential adverse effects on the United States financial system or economic conditions.

(b) PROCEDURES.—Notwithstanding any other provision of Federal or State law, upon the determination of both the Council (upon a vote of not fewer than ⅔ of the members of the Council then serving) and the Board of Governors (upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving) under subsection (a) that a liquidity event exists that warrants use of the guarantee program authorized under section 1155, and with the written consent of the Secretary—

(1) the Corporation shall take action in accordance with section 1155(a); and

(2) the Secretary (in consultation with the President) shall take action in accordance with sections 1155(c).

(c) DOCUMENTATION AND REVIEW.—

(1) DOCUMENTATION.—The Secretary shall—

(A) maintain the written documentation each determination of the Council and the Board of Governors under this section; and

(B) provide the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination of the Council and the Board of Governors under subsection (a), including—

(A) the basis for the determination; and

(B) the likely effect of the actions taken.

(d) REPORT TO CONGRESS.—On the earlier of the date of a submission made to Congress under section 1155(c), or within 30 days of the date of a determination under subsection (a), the Secretary shall provide written notice of the determination of the Council and the Board of Governors to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, including a description of the basis for the determination.

SEC. 1155. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Council and the Board of Governors under section 1154, the Corporation shall create a widely available pro-

gram to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress, except that a guarantee of obligations under this section may not include the provision of equity in any form.

(b) RULEMAKING AND TERMS AND CONDITIONS.—

(1) POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish, by regulation, and with the concurrence of the Secretary, policies and procedures governing the issuance of guarantees authorized by this section. Such policies and procedures may include a requirement of collateral as a condition of any such guarantee.

(2) TERMS AND CONDITIONS.—The terms and conditions of any guarantee program shall be established by the Corporation, with the concurrence of the Secretary.

(c) DETERMINATION OF GUARANTEED AMOUNT.—

(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2) of this subsection, the Secretary (in consultation with the President), shall determine the maximum amount of debt outstanding

that the Corporation may guarantee under this section, and the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to that maximum amount. Upon the expiration of the 5-calendar-day period beginning on the date on which Congress receives the report on the plan of the Corporation, the Corporation may exercise the authority under this section to issue guarantees up to that specified maximum amount, unless there is enacted, within that 5-calendar-day-period, a joint resolution disapproving such report, as provided in subsection (d).

(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Secretary (in consultation with the President) determines, after a submission to Congress under paragraph (1), that the maximum guarantee amount should be raised, and the Council concurs with that determination, then the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to the increased maximum debt guarantee amount. Upon the expiration of the 5-calendar-day period beginning on date on which Congress receives the report on the

plan of the Corporation, the Corporation may exercise the authority under this section to issue guarantees up to that specified maximum amount, unless there is enacted, within that 5-calendar-day-period, a joint resolution disapproving such report, as provided in subsection (d).

(d) JOINT RESOLUTION.—

(1) FAST TRACK CONSIDERATION IN HOUSE.—

(A) CONTENTS OF JOINT RESOLUTION.— For the purpose of this section, the term ''joint resolution'' means only a joint resolution—

(i) that is introduced not later than 3 calendar days after the date on which the report of the Secretary referred to in section 1154(d) is received by Congress;

(ii) which does not have a preamble;

(iii) the title of which is as follows: ''Joint resolution relating to the disapproval of a plan to guarantee obligations under section 1155 of the Restoring American Financial Stability Act of 2010''; and

(iv) the matter after the resolving clause of which is as follows: ''That Congress disapproves the obligation of any amount described in 1205(a) of the Re-

storing American Financial Stability Act of 2010.''.

(B) RECONVENING.—Upon receipt of a report under subsection (c), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report.

(C) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 4 calendar days after the date of receipt of the report under subsection (c). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(D) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the 5th day after

Congress receives the report under subsection (c), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(E) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except 2 hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(2) FAST TRACK CONSIDERATION IN SENATE.—

(A) RECONVENING.—Upon receipt of a report under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the

majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(C) FLOOR CONSIDERATION.—

(i) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a report under subsection (c), and ending on the 5th day after the date on which Congress receives a report under subsection (c) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable.

The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the

conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(3) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(A) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.

(ii) With respect to a joint resolution of the House receiving the resolution—

(I) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on passage shall be on the joint resolution of the other House.

(B) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) CONSIDERATION AFTER PASSAGE.—

(i) IN GENERAL.—If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President takes action with respect to the joint resolution shall be disregarded in computing the 5-day period described in subsection (c).

(ii) VETOES.—If the President vetoes the joint resolution—

(I) the period beginning on the date the President vetoes the joint resolution and ending on the date the Congress receives the veto message with respect to the joint resolution shall be disregarded in computing the 5-day period described in subsection (c); and

(II) debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(E) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolu-

tion, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(e) FUNDING.—

(1) COST OF GUARANTEES AND ADMINISTRATIVE EXPENSES.—

(A) IN GENERAL.—There are authorized to be appropriated to the Corporation, from amounts not otherwise obligated, such amounts as are necessary—

(i) for the cost of guarantees authorized by this section, determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.);

(ii) to pay reasonable costs of administering the program established pursuant to subsection (a); and

(iii) the amount necessary for discharging obligations under any guarantee

issued under subsection (c), in the event that the loan recipient defaults on the guaranteed loan.

(B) COST OF GUARANTEES MEASURED ACCORDING TO CREDIT REFORM.—The cost of guarantees authorized by this section and any cash flows associated with the actions authorized in paragraphs (2) and (5) and in subsection (c) shall be determined as provided in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(2) FEES AND OTHER CHARGES.—The Corporation shall charge fees and other assessments to all participants in the program established pursuant to this section, in such amounts as are necessary to offset projected losses and administrative expenses, including amounts borrowed pursuant to paragraph (4), and such amounts shall be available to the Corporation.

(3) EXCESS FUNDS.—If, at the conclusion of the program established under this section, there are any excess funds collected from the fees associated with such program, the funds shall be deposited in the General Fund of the Treasury.

(4) AUTHORITY OF CORPORATION.—The Corporation—

(A) may borrow funds from the Secretary of the Treasury and issue obligations of the Corporation to the Secretary for amounts borrowed, and the amounts borrowed shall be available to the Corporation for purposes of carrying out a program established pursuant to this section, including the payment of reasonable costs of administering the program, and the obligations issued shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraphs (2) and (5), as applicable; and

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act.

(5) BACKUP SPECIAL ASSESSMENTS.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses, including amounts borrowed pursuant to paragraph (4), arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in

the program, in amounts necessary to address such insufficiency, and which shall be available to the Corporation to cover such losses or expenses.

(6) AUTHORITY OF THE SECRETARY.—The Secretary may purchase any obligations issued under paragraph (4)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(3)(B).

(f) RULE OF CONSTRUCTION.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

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

(1) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term ''depository institution holding company'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) SOLVENT.—The term ''solvent'' means that the value of the assets of an entity exceed its obligations to creditors.

(4) LIQUIDITY EVENT.—The term ''liquidity event'' means—

(A) a reduction in the usual ability of financial market participants—

(i) to sell a type of financial asset, without a significant reduction in price; or

(ii) to borrow using that type of asset as collateral without a significant increase in margin; or

(B) a significant reduction in the usual ability of financial and nonfinancial market participants to obtain unsecured credit.

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

SEC. 1156. ADDITIONAL RELATED AMENDMENTS.

(a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of enactment of this section, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely available debt guarantee program for which section 1155 would provide authority.

(b) MITIGATION.—Section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is amended by striking ''such effects.'' and inserting ''such effects, provided the insured depository institution has been placed in receivership.''.

(c) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) participating in a program under section 1155, or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation may—

(1) appoint itself as receiver for the insured depository institution that defaults;

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require consideration of whether a determination shall be made, as provided in section 202 to resolve the company under section 203; and

(B) if the Corporation is not appointed receiver pursuant to section 203 within 30 days of the date of default, require the company to file a petition for bankruptcy under section 301 of title 11, United States Code; or

(C) file a petition for involuntary bankruptcy on behalf of the company under section 303 of title 11, United States Code.

SEC. 1157. FEDERAL RESERVE ACT AMENDMENTS ON FEDERAL RESERVE BANK GOVERNANCE.

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4 by adding at the end the following:

"(25) SELECTION OF THE PRESIDENT OF THE FEDERAL RESERVE BANK OF NEW YORK.—Notwithstanding any other provision of this section, after the date of enactment of the Restoring American Financial Stability Act of 2010, the president of the Federal Reserve Bank of New York shall be ap-

pointed by the President, with the advice and consent of the Senate, for terms of 5 years.

"(26) LIMITATION ON ELIGIBILITY TO VOTE FOR OR SERVE AS A FEDERAL RESERVE BANK DIRECTOR.—Notwithstanding any other provision of this section, after the date of enactment of the Restoring American Financial Stability Act of 2010, no company, or subsidiary or affiliate of a company that is supervised by the Board may vote for members of the board of directors of a Federal Reserve Band no past or current officer, director, or employee of such company, or subsidiary or affiliate of such company, may serve as a member of the board of directors of a Federal Reserve Bank.".

SEC. 1158. AMENDMENTS TO THE FEDERAL RESERVE ACT RELATING TO SUPERVISION AND REGULATION POLICY.

(a) ESTABLISHMENT OF THE POSITION OF VICE CHAIRMAN FOR SUPERVISION.—

(1) POSITION ESTABLISHED.—The second undesignated paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242) (relating to the Chairman and Vice Chairman of the Board) is amended by striking the third sentence and inserting the following: "Of the persons thus appointed, 1 shall be

designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms.''.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on the date of enactment of this title and applies to individuals who are designated by the President on or after that date to serve as Vice Chairman of Supervision.

(b) FINANCIAL STABILITY AS BOARD FUNCTION.—Section 10 of the Federal Reserve Act (12 U.S.C. 241) is amended by adding at the end the following:

''(11) FINANCIAL STABILITY FUNCTION.—The Board of Governors shall identify, measure, monitor, and mitigate risks to the financial stability of the United States.''.

(c) APPEARANCES BEFORE CONGRESS.—Section 10 of the Federal Reserve Act (12 U.S.C. 241) is amended by adding at the end the following:

"(12) APPEARANCES BEFORE CONGRESS.—The Vice Chairman for Supervision shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at semi-annual hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.".

(d) BOARD RESPONSIBILITY TO SET SUPERVISION AND REGULATORY POLICY.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) (relating to enumerated powers of the Board) is amended by adding at the end of subsection (k) (relating to delegation) the following: "The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.".