HOUSE PROPOSED AMENDMENTS TO TITLE II

Page 128, line 6, strike "(a) IN GENERAL.—"

Page 130, strike line 19 and all that follows through page 132, line 8, and insert the following:

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

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

(B) is—

(i) any bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any company that has been subjected to stricter prudential regulation under section 124;

(iii) any insurance company;

(iv) any company predominantly engaged in activities that 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)) or activities that have been identified for stricter prudential standards under section 124; or

(v) any subsidiary of companies described in clauses (i) through (iv) (other than an insured depository institution or any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) that is a member of the Securities Investor Protection Corporation);

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.);

(D) that is not a Federal home loan bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and

(E) is not an insured depository institution (as defined in section 3(c) of the Federal Deposit Insurance act), a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act), or a government-sponsored enterprise (as such term is defined in section 1004(f) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1811 note)).

Page 132, strike line 21 and all that follows through page 133, line 3.

Page 133, strike lines 6 through 20.

Page 149, line 7, strike ''On'' and insert ''Except as provided in subparagraph (B) or (C), on''.

Page 150, after line 10, insert the following new subparagraph:

(C) CASES INVOLVING INSURANCE COMPANIES.—In the case of an insurance company, 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 an insurance company, the applicable State insurance authority of the State in which the insurance company is domiciled 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 Board of Governors then serving and the affirmative approval of the insurance authority, and in consultation with the Corporation.

Page 159, strike line 15 and all that follows through page 160, line 2, and insert the following:

(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 insolvency, 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 State law, and the assets of such insurance company, including the value of any solvent subsidiary of such insurance company, shall be used for the protection of policy holders.

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

Section 204(d) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as subparagraphs (A), (B), (C), (D), (E), and (F), respectively; and

(2) by moving such subparagraphs 2 ems to the right.

Page 163, line 3, strike ‘‘Upon’’ and insert the following:

(1) IN GENERAL.—Upon

Page 163, line 9, strike ‘‘section 210(n)(11)’’ and insert ‘‘paragraph (2)’’.

Page 164, after line 12, insert the following new paragraph:

(2) 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, including taking any actions specified under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate

potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

Page 307, strike line 1 and all that follows through page 320, line 21, and insert the following (and redesignate subsequent subsections accordingly):

(n) SYSTEMIC DISSOLUTION FUND.—

(1) ESTABLISHMENT AND PURPOSE.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the ''Systemic Dissolution Fund''—

(i) to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets or economy, as determined under section 203(b); and

(ii) to ensure that any taxpayer funds utilized to facilitate such liquidations are fully repaid from assessments levied on financial companies that have assets of $50,000,000,000, adjusted for inflation, or more.

(B) ADJUSTMENT OF THRESHOLD.—The threshold referred to in subparagraph (A)(ii) shall be adjusted on an annual basis, based on the growth of assets owned or managed by financial companies (as defined in section 201(a)(10)).

(2) AUTHORITY.—The Systemic Dissolution Fund shall be administered by the Corporation, which shall have exclusive authority to—

(A) impose assessments on covered financial companies in accordance with paragraphs (6) through (8);

(B) maintain and administer the Fund in a manner so as to make clear to the general public that such Fund is unrelated to any other Fund maintained and administered by the Corporation, including the Deposit Insurance Fund;

(C) utilize the Fund to facilitate the dissolution of a covered financial company (as defined by section 201(a)(7)) as provided in paragraph (3), or take such other actions as are authorized by this subtitle;

(D) invest the Fund in accordance with section 13(a) of the Federal Deposit Insurance Act; and

(E) exercise borrowing authority as prescribed in subsection (o).

(3) USES.—

(A) The Fund shall be available to the Corporation for use with respect to the dissolution of a covered financial company to—

(i) cover the costs incurred by the Corporation, including as receiver, in exercising its rights, authorities, and powers and fulfilling its obligations and responsibilities under this section;

(ii) repay such funds in accordance with subsection (o)(6); and

(iii) cover the costs of systemic stabilization actions, pursuant to section 204(d).

(B) The Fund shall not be used in any manner to benefit any officer or director of such company removed pursuant to section 206(a)(5).

(4) DEPOSITS TO FUND.—All amounts assessed against a financial company under this section shall be deposited into the Fund.

(5) SIZE OF FUND.—The Corporation shall, by rule, establish the minimum size of the Fund consistent with subparagraphs (D) and (E) of paragraph (6).

(6) ASSESSMENTS.—

(A) ASSESSMENTS TO MAINTAIN FUND.—The Corporation shall impose risk-based assessments on financial companies in such amount and manner and subject to such terms and conditions that the Corporation determines, by regulation and in consultation with the Council, are necessary for the amount in the Fund to at least equal the minimum size established pursuant to paragraph (5).

(B) ASSESSMENTS TO REPLENISH THE FUND.—If the Fund falls below the minimum size established pursuant to paragraph (5), the Corporation shall impose assessments on financial companies in such amounts and manner and subject to such terms and conditions as the Corporation determines, by regulation and in consultation with the Council, are necessary to replenish the fund subject to the limitations in subparagraph (E).

(C) OTHER ASSESSMENTS.—When assessments are required for the purpose of repaying amounts owed to Treasury, the Corporation shall—

(i) before assessing any financial company, impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (7), impose assessments on those eligible financial companies and those financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies that the Corporation determines to be in the high-risk category in accordance with paragraph (7); and

(iii) if the amounts recovered on a cumulative basis under clauses (i) and (ii) are insufficient, after taking into account the considerations set forth in paragraph (7), impose assessments on those eligible financial companies and those financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies that the Corporation determines not to be in the high-risk category in accordance with paragraph (7).

(D) MINIMUM ASSESSMENT THRESHOLD.—

(i) IN GENERAL.—The Corporation shall not assess financial companies with less than $50,000,000,000, adjusted for inflation, of assets on a consolidated basis, subject to any differentiation as permitted in paragraph (8) and shall assess financial companies with $50,000,000,000, adjusted for inflation, or more in assets in accordance with paragraphs (7) and (8).

(ii) HEDGE FUNDS.—The Corporation shall not assess financial companies that manage hedge funds (as defined by the Corporation for the purpose of this section, in consultation with the Securities and Exchange Commission) with less than $10,000,000,000, adjusted for inflation, of assets, under management on a consolidated basis, subject to any differentiation as permitted in paragraph (8) and shall assess any financial companies that manage hedge funds with $10,000,000,000 or more of assets under management in accordance with paragraphs (7) and (8).

(E) MAXIMUM SIZE OF FUND VIA ASSESSMENTS.—

(i) IN GENERAL.—The Corporation shall suspend assessments on financial companies on the day after the date on which the total of the assessments, excluding interest or other earnings from investments made pursuant to paragraph (2)(D), equals $150,000,000,000.

(ii) EXCEPTIONS.—Any suspension of assessments under clause (i)—

(I) may be set aside if the Fund falls below $150,000,000,000; and

(II) shall be set aside if the Fund falls below the minimum level established in subparagraph (D).

(7) FACTORS.—The Corporation, in consultation with the Council shall establish a risk matrix to

be used in establishing assessments that takes into account—

(A) the actual or expected risk of losses to the Fund;

(B) economic conditions generally affecting financial companies so as to allow assessments and the Fund to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(C) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation or other State insolvency proceeding with respect to 1 or more insurance companies;

(D) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the dissolution of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the company's liabilities, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates; and

(E) such other factors as the Corporation, in consultation with the Council, may determine to be appropriate.

The Corporation shall, based on the consideration of all the factors in such risk matrix, determine which companies are and are not in the high-risk category for purposes of the sequential assessments required under paragraph (6)(C).

(8) REQUIREMENT FOR EQUITABLE TREATMENT IN ASSESSMENTS.—In establishing the assessment system for the Fund, the Corporation, by regulation and in consultation with the Council, shall differentiate among financial companies based on complexity of operations or organization, interconnectedness, size, direct or indirect activities, and any other factors the Corporation or the Council may deem appropriate to ensure that the assessments charged equitably reflect the risk posed to the Fund by particular classes of financial companies.

(9) MINIMUM COMMENT PERIOD.—In order to ensure sufficient opportunity for public and congressional review and evaluation of any assessment system, any proposed regulations regarding the implementation of the assessment system under this subtitle shall provide an opportunity for public comment during a period of not less than 60 days.

(o) BORROWING AUTHORITY.—

(1) BORROWING FROM TREASURY.—

(A) IN GENERAL.—Subject to paragraphs (3), (4), and (5), the Corporation may borrow from the Treasury, and the Secretary of the Treasury is authorized to lend to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are required, in addition to the funds available in the Systemic Dissolution Fund, to permit the orderly dissolution of 1 or more covered systemically significant financial companies, covered affiliates, or covered subsidiaries under this title.

(B) RATE OF INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(2) PUBLIC DEBT ISSUANCES.—For the purposes described in paragraph (1), the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States.

(3) BORROWING AUTHORITY WHEN FUND ASSETS ARE LESS THAN $150,000,000,000.—

(A) Subject to paragraph (B), the borrowing authority granted in paragraph (1) shall be available to the Corporation where—

(i) the value of the Fund is less than $150,000,000,000;

(ii) the Corporation determines that the immediate dissolution of a financial company or financial companies requires more funds than are available in the Fund; and

(iii) the Corporation has provided a specific plan for repayment under paragraph (7)(A).

(B) The Corporation may borrow, and the Secretary may lend, any amount of funds that, when added to the amount available in the Fund on the date the Corporation makes a request to borrow funds, would not exceed $150,000,000,000.

(C) For purposes of paragraph (1), the Corporation's total debt may not exceed $150,000,000,000 (not including any funds borrowed pursuant to subsection (s)).

(4) ADDITIONAL BORROWING AUTHORITY.—

(A) If at any time the Corporation anticipates that the dissolution of any financial company or financial companies will require funds in excess of $150,000,000,000—

(i) the Corporation shall submit to the Secretary and the President a written request for additional borrowing authority subject to the limitation in subparagraph (5), which shall be accompanied by a certification indicating the anticipated amount needed, the basis on which such amount was determined, and any such information as the Secretary may deem necessary; and

(ii) the President shall transmit a request to the House of Representatives and the Senate requesting the additional borrowing authority, which shall include the certification referred to in clause (i) and which includes a repayment schedule as outlined in paragraph (7).

(B) Any request for borrowing authority under paragraph (A) shall be effective only if approved by affirmative vote of the House of Representatives and the Senate in accordance with subsection (s).

(5) LIMITATIONS ON ADDITIONAL BORROWING AUTHORITY.—

(A) No request for borrowing authority is permitted under paragraph (4) unless the President, in consultation with the Council, certifies to the House of Representatives and the Senate that the borrowing authority is necessary to avoid or mitigate an imminent financial emergency.

(B) The amount of borrowing authority requested under subparagraph (A)(i) may not exceed $50,000,000,000.

(6) PROCEEDS FROM LIQUIDATION, REPAYMENT OF FUNDS.—

(A) IN GENERAL.—The Corporation shall take such measures as may be appropriate to maximize the amount of funds from any dissolution that may be available for repayment under subparagraph (B) consistent with systemic concerns.

(B) REPAYMENT PRIORITY.—Amounts realized from the dissolution of any financial company under this subtitle that are not otherwise utilized by the Corporation to dissolve a financial company under subsection (n)(3)(A) shall be paid—

(i) first, to repay any costs incurred in exercising the borrowing authority granted in paragraph (1); and

(ii) second, to recapitalize the Fund, subject to the requirements of section 1604(g), to such level as the Corporation deems necessary, but not to exceed $150,000,000,000.

(7) REPAYMENT PLAN AND SCHEDULES REQUIRED FOR ANY BORROWING.—

(A) IN GENERAL.—No amount may be provided by the Secretary of the Treasury to the Corporation under paragraph (1) unless an agreement is in effect between the Secretary and the Corporation which—

(i) provides a specific plan and schedule for assessments under (n)(6) to achieve the repayment of the outstanding amount of any borrowing under such subsection; and

(ii) demonstrates that income to the Corporation from assessments under this section will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(B) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary of the Treasury and the Corporation shall—

(i) consult with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the

Senate on the terms of any repayment schedule agreement; and

(ii) submit a copy of each repayment schedule agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under paragraph (1).

(p) INFORMATION GATHERING AND VERIFICATION; PAYMENTS.—

(1) IN GENERAL.—The Corporation may require each financial company to make available such information as the Corporation may require—

(A) for purposes of—

(i) determining the financial company's assessment under this section;

(ii) verifying the accuracy of information; and

(iii) preparing for dissolution, including a dissolution plan as required by this section; and

(B) for such other purposes as may be appropriate and necessary to promote the orderly dissolution of the financial company.

(2) USE OF EXISTING REPORTS.—The Corporation shall, to the fullest extent possible, accept—

(A) reports that a financial company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

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

(C) externally audited financial statements.

(3) AUTHORITY FOR ON-SITE INSPECTION.—The Corporation may make on-site inspections of a financial company's books and records as necessary to carry out the purposes of this subsection.

(4) RULEMAKING.—The Corporation may promulgate such rules or regulations as are necessary or appropriate to implement this subsection.

(5) PAYMENTS OF ASSESSMENTS REQUIRED.—

(A) IN GENERAL.—Any financial company subject to an assessment under this section shall pay to the Corporation such assessment.

(B) FORM OF PAYMENT.—The payments required under this section shall be made in such manner and at such time or times as the Corporation, in consultation with the Council, shall prescribe by regulation.

(6) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—Any financial company that fails or refuses to pay any assessment under this section shall be subject to a penalty under section 18(h) of the Federal Deposit Insurance Act, as if that financial company were an insured depository institution.

(q) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any financial company the amount of any unpaid assessment lawfully payable by such company.

(2) STATUTE OF LIMITATIONS.—Notwithstanding any other provision in Federal law, or the law of any State—

(A) any action by a financial company to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C);

(B) any action by the Corporation to recover from a financial company the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C); and

(C) if a financial company has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(r) REQUIREMENT TO MAINTAIN SYSTEMIC DISSOLUTION FUND AS SEPARATE FUND.—The Systemic Dissolution Fund shall at all times be administered in a manner that is separate and distinct from the Deposit Insurance Fund, and the Corporation shall take such actions as may be necessary to ensure that such distinction is made with respect to internal processes and procedures as well as with regard to any public information, discussion or other communications involving either Fund.

(s) CONGRESSIONAL APPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

(1) INTRODUCTION.—On the day on which the request of the President is received by the House of Representatives and the Senate under subsection

(o)(4)(A)(ii), a joint resolution specified in paragraph (5) shall be introduced in the House by the majority leader of the House and in the Senate by the majority leader of the Senate. If either House is not in session on the day on which such a request is received, the joint resolution with respect to such request shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution introduced under paragraph (1) is referred shall report such joint resolution to the House not later than 5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such 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.

(B) PROCEEDING TO CONSIDERATION.—After all committees authorized to consider a joint resolution have reported such joint resolution to the House or have been discharged from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of the joint resolution, for the majority leader to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be in order if the House has received a message from the Senate under paragraph (4)(C). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(C) CONSIDERATION.—The joint resolution shall be considered in the House and shall be considered as read. All points of order against a 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 two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

(3) CONSIDERATION IN THE SENATE.—

(A) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(B) 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 fourth day after the applicable date of introduction in the Senate and ending on the sixth day after the applicable date of introduction in the Senate (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.

(4) 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 the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

(B) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(C) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

(i) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(ii) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(D) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph and the preceding paragraphs are 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 resolution, 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.

(5) DEFINITION.—In this section, the term "joint resolution" means only a joint resolution—

(A) which does not have a preamble;

(B) the title of which is as follows: "Joint resolution relating to the approval of request for borrowing authority under the Financial Stability Improvement Act of 2009."; and

(C) the sole matter after the resolving clause of which is as follows: "That the Congress approves the request for additional borrowing authority transmitted to the Congress on ______ by the President under section 1609(o)(4)(A)(ii) of the Financial Stability Improvement Act of 2009.", the blank space being filled with the appropriate date.

Page 337, after line 6, insert the following sections:

SEC. 215. SYSTEMIC LIQUIDATION AUTHORITY.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 11A the following new section:

"SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.

"(a) SYSTEMIC DISSOLUTION AUTHORITY.—The Corporation shall establish a Systemic Dissolution Authority, which shall function as a subsidiary of the Corporation.

"(b) SYSTEMIC DISSOLUTION FUND.—Any fund established for the purpose of facilitating the dissolution of a financial company under title II of the Restoring American Financial Stability Act of 2010 shall be called the Systemic Dissolution Fund, which shall be managed by the Corporation, through the Systemic Dissolution Authority.

"(c) MANAGEMENT OF FUND.—

"(1) SEPARATE MAINTENANCE.—The Systemic Dissolution Fund shall be separately maintained and not commingled with any other fund of the Corporation.

"(2) TREATMENT OF AND ACCOUNTING FOR ASSETS.—The assets and liabilities of the Systemic Dissolution Fund—

"(A) shall be the assets and liabilities of the Fund and not of the Corporation; and

"(B) shall not be consolidated with the assets and liabilities of the Deposit Insurance Fund or the Corporation for accounting, reporting, or any other purpose.

"(d) RIGHTS, POWERS, AND DUTIES.—

"(1) IN GENERAL.—The Corporation, in addition to any rights, powers, and duties under this Act or any other law, shall, through the Systemic Dissolution Authority, have all rights, powers, and duties necessary to implement and maintain the Systemic Dissolution Fund in accordance with title II of the Restoring American Financial Stability Act of 2010.

"(2) POWERS AS RECEIVER FOR COVERED FINANCIAL COMPANY.—When acting as receiver with respect to any covered financial company, as defined in title II of the Restoring American Financial Stability Act of 2010, the Corporation, through the Systemic Dissolution Authority, shall have all rights, powers, and duties that the Corporation has as receiver under such subtitle.

"(3) SPECIFIC AND INCIDENTAL POWERS.—The Corporation, through the Systemic Dissolution Authority, or any duly authorized officer or agent of the Authority, may exercise all powers specifically granted by the provisions of this Act and title II of the Restoring American Financial Stability Act of 2010 and such incidental powers as shall be necessary to carry out the powers so granted and accomplish the purposes of title II of the Restoring American Financial Stability Act of 2010.

"(e) STAFF AND RESOURCES.—

"(1) IN GENERAL.—The Corporation shall assign such staff, and provide such administrative and other support services to the Systemic Dissolution Authority as is necessary to fulfill the statutory responsibilities of the Authority.

"(2) ADMINISTRATIVE EXPENSES.—The cost of all personnel, services, and resources provided on behalf of the Systemic Dissolution Authority shall be paid from the Systemic Dissolution Fund.".

SEC. 216. STUDY ON SECURED CREDITOR HAIRCUTS.

(a) STUDY REQUIRED.—The Corporation shall conduct a study evaluating the importance of maximizing United States taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the Orderly Liquidation Authority authorized by this Act. In carrying out such study, the Corporation shall—

(1) not be prejudicial to current or past laws or regulations with respect to secured creditor treatment in a resolution process;

(2) study the similarities and differences between the resolution mechanisms authorized by the United States Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991, and the Orderly Liquidation Authority authorized by this Act;

(3) determine how various secured creditors are treated in these resolution mechanisms and examine how a haircut (of various degrees) on secured creditors could improve market discipline and protect taxpayers;

(4) compare the benefits and dynamics of prudent lending practices by depository institutions in secured loans for consumers and small businesses to the lending practices of secured creditors to large, interconnected financial firms;

(5) consider whether credit differs according to different types of collateral and different terms and timing of the extension of credit;

(6) include an examination of stakeholders who were unsecured or under-collateralized and seek collateral when a firm is failing, and the impact this

behavior has on financial stability and an orderly resolution that protects taxpayers if the firm fails.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Corporation shall issue a report to the Congress containing all findings and conclusions made by the Corporation in carrying out the study required under subsection (a).

HOUSE PROPOSED AMENDMENT TO TITLE VIII

Strike title VIII.

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HOUSE PROPOSED AMENDMENT TO TITLE I

Strike page 23, line 20, and all that follows through page 124, line 2, and insert the following:

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Financial Stability Improvement Act of 2010".

(b) DEFINITIONS.—For purposes of this title, the following definitions shall apply:

(1) The term "Board" means the Board of Governors of the Federal Reserve System.

(2) The term "Council" means the Financial Services Oversight Council established under section 111.

(3) The term "Federal financial regulatory agency" means any agency that has a voting member of the Council as set forth in section 111(b)(1).

(4) The term "financial company" means a company or other entity—

(A) that is—

(i) incorporated or organized under the laws of the United States or any State, territory, or possession of the United

States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands; or

(ii) a company incorporated in or organized in a country other than the United States that has significant operations in the United States (hereafter in this title referred to as a ''foreign financial parent'') after through—

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

(II) a United States affiliate or other United States operating entity;

(B) that is, in whole or in part, directly or indirectly, engaged in financial activities; and

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.).

(5) FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—The term ''financial holding company subject to stricter standards'' means—

(A) a financial company that has been subjected to stricter prudential standards under subtitle B; or

(B) in the case of a financial company described in subparagraph (A) that is required to establish an intermediate holding company, the intermediate holding company through which the financial company is required to conduct its financial activities.

(6) The term ''primary financial regulatory agency'' means the following:

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

(B) The Board, with respect to—

(i) any State member bank;

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

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

(iv) after the date on which the functions of the Office of Thrift Supervision are transferred under title III, any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) and any subsidiary (as such term is defined in the Bank Holding Company Act of 1956) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph, to the extent that the subsidiary is engaged in an activity described in such subparagraph;

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

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

(C) The Federal Deposit Insurance Corporation, with respect to any State nonmember bank, any insured State branch of a foreign bank (as such terms are defined in section 3 of the Federal Deposit Insurance Act), and, after the date on which the functions of the Office of Thrift Supervision are transferred under title III, any State savings association.

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

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

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

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

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

(iv) any clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934);

(v) a securities-based swap execution facility that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any exchange registered as a national securities exchange with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vii) any credit rating agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(viii) any securities information processor registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(ix) any transfer agent registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

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

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

(ii) any derivatives clearing organization, designated contract market, or swap execution facility (as defined in the Commodity Exchange Act).

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

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

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

(7) TERMS DEFINED IN OTHER LAWS.—

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

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

Subtitle A—The Financial Services Oversight Council

SEC. 111. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.

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

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

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

(A) The Secretary of the Treasury, who shall serve as the Chairman of the Council.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Comptroller of the Currency.

(D) The Director of the Office of Thrift Supervision, until the functions of the Director of the Office of Thrift Supervision are transferred pursuant to title III.

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

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

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

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

(I) The Chairman of the National Credit Union Administration.

(J) The head of the Consumer Financial Protection Agency.

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

shall not be excluded from any of the Council's proceedings, meetings, discussions, and deliberations:

(A) The Director of the Federal Insurance Office.

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

(C) A State banking supervisor, to be designated by a selection process determined by the State bank supervisors, provided that the term for which a State banking supervisor may serve shall last no more than the 2-year period beginning on the date that the supervisor is selected.

(D) A State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners, provided that the term for which a State securities commissioner may serve shall last no more than the

2-year period beginning on the date that the commissioner is selected.

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

(1) To advise the Congress on financial domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the United States financial markets.

(2) To monitor the financial services marketplace to identify potential threats to the stability of the United States financial system.

(3) To identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace.

(4) To develop strategies (and conduct exercises in furtherance of those strategies) to prepare for potential threats identified under paragraphs (2) and (3). In doing so, the Council shall collaborate with participants in the financial sector, financial sector coordinating councils, and any other parties the Council determines to be appropriate.

(5) To subject financial companies and financial activities to stricter prudential standards in order to

promote financial stability and mitigate systemic risk in accordance with subtitle B.

(6) To issue formal recommendations that a Council member agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk in accordance with subtitle B of this title.

(7) To monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States or place United States financial services firms or United States financial markets at a competitive disadvantage.

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

(9) To provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members.

(10) At the request of an agency that is a Council member, to resolve a jurisdictional dispute between that agency and another agency that is a Council member in accordance with section 112.

(11) To review and submit comments to the Securities and Exchange Commission and any standards setting body with respect to an existing or proposed accounting principle, standard, or procedure.

SEC. 112. RESOLUTION OF DISPUTES AMONG FEDERAL FINANCIAL REGULATORY AGENCIES.

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

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

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

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

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

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

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

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

(2) after consideration of relevant information provided by each 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 be in writing and include an explanation and shall be binding on all Federal financial regulatory agencies that are parties to the dispute.

SEC. 113. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.

The Council is authorized to appoint—

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

(2) such temporary special advisory, technical, or professional committees as may be useful in car-

rying out its functions, which may be composed of Council members and their staff, other persons, or a combination.

SEC. 114. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS AND COUNCIL GOVERNANCE.

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

(b) VOTING.—Unless otherwise provided, the Council shall make all decisions the Council is required or authorized to make by a majority of the total voting membership of the Council under section 111(b)(1).

SEC. 115. COUNCIL STAFF AND FUNDING.

(a) VOTING MEMBERS OF THE COUNCIL.—The Secretary of the Treasury shall and all other voting members of the Council may, with the approval of the Council—

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

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

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

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

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

(c) STAFF STATUS; COUNCIL FUNDING.—

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

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

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

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

SEC. 116. REPORTS TO THE CONGRESS.

(a) IN GENERAL.—Semiannually the Council shall submit a report to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Comptroller General of the United States that—

(1) describes significant financial and regulatory developments, including insurance and accounting regulations and standards, and assesses the impact of those developments on the stability of the financial system;

(2) recommends actions that will improve financial stability;

(3) details the size, scale, scope, concentration, activities, and interconnectedness of the 50 largest financial institutions, by total assets, in the United States;

(4) describes strategies developed by the Council to respond to potential threats to the stability of the United States financial system and the outcome of exercises conducted in furtherance of those strategies;

(5) describes the nature and scope of any company or activities identified under subtitle B and steps taken to address them; and

(6) describes any dispute resolutions undertaken under section 112 and the result of such resolutions.

(b) EVALUATION OF ANNUAL REPORT BY GAO.—Not later than 120 days after receiving the report required by subsection (a), the Comptroller General of the United States shall submit an evaluation of such report to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to prevent systemic risk that would negatively affect the economy, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of

the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(d) TESTIMONY BY THE CHAIRMAN.—The Chairman of the Council 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 a semi-annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(e) STUDY OF EFFECTS CONSUMER FINANCIAL PROTECTION AGENCY REGULATIONS AND STANDARDS.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the effects that regulations and standards of the Consumer Financial Protection Agency will have on all covered persons (as such term is defined in section 1002(6)), including nondepository institution covered persons. The Director of the Consumer Financial Protection Agency shall take the findings of the study into account when issuing regulations.

(2) VALUE OF NONBANK PRODUCTS.—The study shall include an evaluation and assessment of the appropriateness of using "APR" as a true measure of the value of all nonbank products.

(3) SUBMISSION.—Not later than 240 days after the date of the enactment of this Act, the Director of the Consumer Financial Protection Agency shall submit the study to Congress and include any recommendations the Director may have for changes in law and regulations to improve consumer protections and maintain access to credit.

SEC. 117. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) The Federal Advisory Committee Act shall not apply to the Financial Services Oversight Council, or any special advisory, technical, or professional committees appointed by the 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).

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

SEC. 118. OVERSIGHT BY GAO.

(a) AUTHORITY TO AUDIT.—The Comptroller General of the United States may audit the activities and financial transactions of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent such activities and financial transactions relate to such person's or entity's work for the Council.

(b) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General of the United States shall have access, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, to—

(A) any records or other information under the control of or used by the Council;

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent such records or other information is relevant to an audit under subsection (a); and

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the agent's or representative's activities on behalf of the Council) at such reasonable times as the Comptroller General may request.

(2) CERTAIN INFORMATION SPECIFIED.—Access under paragraph (1) includes access to—

(A) information provided to the Council by its voting and nonvoting members under section 122; and

(B) the identity of each financial holding company subject to stricter standards.

(3) COPIES.—Comptroller General may make and retain copies of such books, accounts, and other records access to which is granted under this provision as the Comptroller General considers appropriate.

(c) PERIODIC EVALUATIONS.—The Comptroller General of the United States shall periodically evaluate the processes and activities of the Council and the extent to which the Council is fulfilling its duties under this title. The Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of each such evaluation.

Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes

SEC. 121. FEDERAL RESERVE BOARD AUTHORITY THAT OF AGENT ACTING ON BEHALF OF COUNCIL.

For purposes of this subtitle, the Board of Governors of the Federal Reserve System shall act in the capacity of agent for the Council, acting on behalf of the Council.

SEC. 122. COUNCIL AND BOARD AUTHORITY TO OBTAIN INFORMATION.

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

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

(2) to identify global trends and developments that could pose systemic risks to the stability of the economy of the United States or other economies; or

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

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

(c) FINANCIAL COMPANY DATA COLLECTION.—

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

(2) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from financial

companies that are regulated by the primary financial regulatory agencies, the Council or the Board shall coordinate with such agencies and shall, whenever possible, rely on information already being collected by such agencies.

(3) MITIGATION REQUIREMENTS IN CASE OF FOREIGN FINANCIAL PARENTS.—Before requiring the submission of reports from a company that is a foreign financial parent, the Council or the Board shall, to the extent appropriate, coordinate with any appropriate foreign regulator of such company and any appropriate multilateral organization and, whenever possible, rely on information already being collected by such foreign regulator or multilateral organizational with English translation.

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

(e) ADDITIONAL PROVISIONS.—

(1) DATA AND INFORMATION SHARING.—The Chairman of the Council, in consultation with the other members of the Council, may—

(A) establish procedures to share data and information collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information collected by the Council with the Chairman of the Board on a real-time basis;

(C) issue any regulations necessary to carry out this subsection; and

(D) designate the format in which requested data and information must be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such data by the Council in its analysis.

(2) APPLICABLE PRIVILEGES NOT WAIVED.—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be compelled to waive and shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

(A) the Council;

(B) any Federal financial regulator or State financial regulator, in any capacity; or

(C) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(3) DISCLOSURE EXEMPTION.—Any information obtained by the Council under this section shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(4) CONSULTATION WITH FOREIGN GOVERNMENTS.—Under the supervision of the President, and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Chairman of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(5) REPORT.—Not later than 6 months after the date of the enactment of this title, the Chairman of the Council shall report to the Financial Services Committee of the House of Representatives and the Banking, Housing, and Urban Affairs Committee of the Senate the opinion of the Council as to whether

setting up an electronic database as described in paragraph (1)(B) would aid the Council in carrying out this section.

SEC. 123. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO FEDERAL FINANCIAL REGULATORY AGENCIES; AGENCY AUTHORITY.

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

(b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—

(1) A Federal financial regulatory agency specifically may, in response to a Council recommendation under this section or otherwise, impose, require reports regarding, examine for compliance with, and enforce stricter prudential standards and safeguards for the firms it regulates to mitigate systemic risk. This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective Federal fi-

nancial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(2) APPLYING STANDARDS TO FOREIGN FINANCIAL PARENTS.—In applying standards under paragraph (1) to any foreign financial parent, or to any branch of, subsidiary of, or other operating entity related to such foreign financial parent that operates within the United States, the Federal financial regulatory agency shall—

(A) give due regard to the principles of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial parent is subject to comparable standards on a consolidated basis in the home country of such foreign financial parent that are administered by a comparable foreign supervisory authority.

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

(1) the actions the Federal financial regulatory agency has taken in response to the Council's rec-

ommendation, additional actions contemplated, and timetables therefore; or

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

SEC. 124. SUBJECTING FINANCIAL COMPANIES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council shall, in consultation with the Board and any other primary financial regulatory agency that regulates the financial company or a subsidiary of such company, and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office, subject a financial company to stricter prudential standards under this subtitle if the Council determines that—

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

(2) the nature, scope, size, scale, concentration, and interconnectedness, or mix of the company's activities could pose a threat to financial stability or the economy.

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

(1) The extent of the company's leverage.

(2) The extent and nature of the company's off-balance sheet exposures.

(3) The extent and nature of the company's transactions and relationships with other financial companies.

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

(5) The importance of the company as a source of credit for low-income, minority, or underserved communities and the impact the failure of such company would have on the availability of credit in such communities.

(6) The extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse.

(7) The nature, scope, and mix of the company's activities.

(8) The degree to which the company is already regulated by one or more Federal financial regulatory agencies or, in the case of a foreign financial parent, the extent to which such foreign parent is subject to prudential standards on a consolidated basis in the home country of such financial parent that are administered and enforced by a comparable foreign supervisory authority.

(9) The amount and nature of the company's financial assets.

(10) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

(11) Any other factors that the Council deems appropriate.

(c) NOTIFICATION OF DECISION.—The Board, in an executive capacity on behalf of the Council, shall immediately upon the Council's decision notify the financial company by order, which shall be public, that the financial company is subject to stricter prudential standards, as prescribed by the Board in accordance with section 125.

(d) PERIODIC REVIEW AND RESCISSION OF FINDINGS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council con-

taining an assessment of whether each company subjected to stricter prudential standards should continue to be subject to such standards.

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

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial holding company subject to stricter standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting a company to stricter prudential standards if the Council determines that the company no longer meets the conditions for being subjected to stricter prudential standards in subsections (a) and (b).

(e) APPEAL.—

(1) ADMINISTRATIVE.—The Council and the Board, in an executive capacity on behalf of the Council, shall establish a procedure through which a financial company that has been subjected to stricter prudential standards in accordance with this section may appeal being subjected to stricter prudential standards.

(2) JUDICIAL REVIEW.—Any financial company which has been subjected to stricter prudential standards may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

(f) EFFECT OF COUNCIL DECISION.—

(1) APPLICATION OF FEDERAL LAWS.—

(A) APPLICATION OF BANK HOLDING COMPANY ACT AND FEDERAL DEPOSIT INSURANCE ACT.—A financial company subject to stricter standards that does not own a bank (as defined in section 2 of the Bank Holding Company Act of 1956) and that is not a foreign bank or company that is treated as a bank holding company under section 8 of the International Banking Act of 1978 shall be subject to section 4, subsections (b), (c), (d), (e), (f), and (g) of section 5, and section 8 of the Bank Holding Company Act of 1956, and section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of

1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(B) BOARD AUTHORITY.—For purposes of administering and enforcing the provisions of this title, the Board may take any action with respect to a financial holding company subject to stricter standards described in subparagraph (A) or its subsidiaries under the authorities described in subparagraph (A) as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(2) APPLICATION OF ACTIVITY RESTRICTIONS AND INTERMEDIATE HOLDING COMPANY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), (K), and (M)—

(i) a financial holding company subject to stricter standards that conducts activities that do not comply with section 4 of the Bank Holding Company Act shall be required to establish or designate an intermediate holding company through which it conducts activities of the company that are determined to be financial in nature or incidental thereto under section 4(k) of such Act; and

(ii) such intermediate holding company shall be the financial holding company subject to stricter standards for purposes of this title.

(B) EXCEPTIONS FROM INTERMEDIATE HOLDING COMPANY REQUIREMENTS.—

(i) GENERAL REQUIREMENT FOR BOARD TO CONSIDER EXCEPTIONS.—Before such time as a financial holding company subject to stricter standards is required to establish or designate an intermediate holding company, and in consultation with the financial holding company subject to stricter standards and any appropriate Federal or State financial regulators (and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office)—

(I) the Board shall consider whether to grant any of the exemptions described under subparagraph (C), in accordance with that provision; and

(II) the Board, at the request of a financial holding company subject to stricter standards that is predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, shall consider whether to exempt the financial holding company subject to stricter standards from the requirement to establish an intermediate holding company, taking into consideration paragraph (2)(L), and the extent to which the exemption would: facilitate the extension of credit to individuals, households and businesses; improve efficiency or customer service or result in other public benefits; potentially threaten the safety and soundness of the financial holding company or any of its subsidiaries; potentially increase systemic risk or threaten the stability of the overall financial system; potentially result in unfair competition; and potentially have anticompetitive effects that would not be outweighed by public benefits.

(ii) BOARD DETERMINATION NOT TO EXEMPT.—

(I) IN GENERAL.—If the Board determines not to exempt the financial holding company subject to stricter standards from the requirement to establish an intermediate holding company, the financial holding company subject to stricter standards shall establish such intermediate holding company within 90 days after the Board's determination.

(II) EXTENSION OF PERIOD.—The Board may extend the time by which the financial holding company subject to stricter standards is required to establish an intermediate holding company for an additional reasonable period of time, not to exceed 180 days.

(iii) BOARD DETERMINATION TO EXEMPT.—

(I) IN GENERAL.—If the Board grants the requested exemption from the requirement to establish an intermediate holding company, the financial holding company subject to stricter standards shall at all times remain predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, and shall be the financial holding company subject to stricter standards for purposes of this title.

(II) SUBSEQUENT LOSS OF EXEMPTION.—Upon a determination by the Board, in consultation with any relevant Federal or State regulators of the financial holding company subject to stricter standards, and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office, that the financial holding company subject to stricter standards fails to comply with this subsection, the financial holding company subject to stricter standards shall lose the exemption from the intermediate holding company requirement and shall establish an intermediate holding company within the time periods described in clause (ii)(I).

(C) RULES AND EXEMPTIONS.—In addition to any other authority of the Board, the Board shall prescribe rules and regulations or issue orders providing for the establishment and registration of intermediate holding companies and shall provide exemptions from the requirements of this Act (including an order in response to a request from an affected company), including, but not limited to, exemptions—

(i) with respect to the requirement to conduct such activities which are financial in nature, as determined under section 4(k) of the Bank Holding Company Act of 1956, other than financial activities conducted for such company or any affiliate, including any financial activity engaged in for both the company or an affiliate and a nonaffiliate as permitted under section 4(f)(2)(D) of the Bank Holding Company Act of 1956 and financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such intermediate holding company that is not a subsidiary of such intermediate holding company, through such intermediate holding company, if the Board makes a finding that such exemption—

(I)(aa) would facilitate the extension of credit to individuals, households, and businesses; or

(bb) would allow for greater efficiency, improved customer service, or other public benefits in the conduct of financial activities by affected companies;

(II) would not threaten the safety and soundness of the intermediate holding company, or of any insured depository institution or other subsidiary of the intermediate holding company;

(III) would not increase systemic risk or threaten the stability of the overall financial system;

(IV) would not, as applied to the activities that are the subject of the rule, order or request, result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; and

(V) would meet the financial and managerial standards for financial holding companies described in subparagraphs (A) and (B) of section 4(j)(4) of the Bank Holding Company Act of 1956; and

(ii) from the affiliate transaction requirements of paragraph (F), including but not limited to exemptions that would facilitate extensions of credit to unaffiliated persons for the personal, household, or business purposes of such unaffiliated persons, unless the Board makes a finding that such exemption—

(I) is not consistent with the purposes of section 23A and section 23B of the Federal Reserve Act;

(II) would threaten the safety and soundness of the intermediate holding company, or any insured depository institution or other subsidiary of the intermediate holding company;

(III) would increase systemic risk or threaten the stability of the overall financial system;

(IV) would not, as applied to the activities that are the subject of the rule, order or request result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; or

(V) would permit an unfair, deceptive, abusive, or unsafe-and-unsound act or practice.

(D) PARENT COMPANY REPORTS.—The Board may, from time to time, require reports under oath from a company that controls an intermediate holding company, and appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section (including assessing the company's ability to serve as a source of financial strength pursuant to paragraph (J)) and enforcing such compliance.

(E) LIMITED PARENT COMPANY ENFORCEMENT.—

(i) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1) under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(ii) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of clause (i).

(iii) NO EFFECT ON OTHER AUTHORITY.—No provision of this subparagraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

(F) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—

(i) SECTION 23A AND 23B APPLICABILITY.—

(I) IN GENERAL.—Transactions between an intermediate holding company (or any nonbank subsidiary thereof) and any affiliate not controlled by the intermediate holding company shall be subject to the restrictions and limitations contained in section 23A and section 23B of the Federal Reserve Act as if the intermediate holding company were a member bank, provided, that a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services but shall be subject to review under section 23A(f)(1) of such Act.

(II) COVERED TRANSACTIONS.—A depository institution controlled by an intermediate holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate that is not the intermediate holding company or a subsidiary of the intermediate holding company; provided that, for purposes of the prohibition, a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services, but shall be subject to review under section 23A(f)(1) of the Federal Reserve Act.

(ii) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting any subsidiary insured depository institution of an intermediate holding company from compliance with section 23A or 23B of the Federal Reserve Act with respect to each affiliate of such institution (as defined in section 23A or 23B of the Federal Reserve Act), including any affiliate that is the intermediate holding company or subsidiary of the intermediate holding company.

(G) TYING PROVISIONS.—A company that directly or indirectly controls an intermediate holding company shall be—

(i) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

(ii) subject to the restrictions of section 106 of the Bank Holding Company

Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, treated as if such company or affiliate were a bank holding company and such bank were a subsidiary of a bank holding company.

(H) FINANCIAL HOLDING COMPANY REQUIREMENTS.—An intermediate holding company shall be subject to—

(i) the conditions for engaging in expanded financial activities in section 4(l) of the Bank Holding Company Act of 1956; and

(ii) the provisions applicable to financial holding companies that fail to meet certain requirements in section 4(m) of the Bank Holding Company Act of 1956.

(I) INDEPENDENCE OF INTERMEDIATE HOLDING COMPANY.—

(i) No less than 25 percent of the members of the board of directors of an intermediate holding company, and each subsidiary of an intermediate holding company, shall be independent of the parent company of the intermediate holding company and any subsidiary of such parent company. For purposes of this subsection, a director shall be independent of the parent company if such person is not currently serving, and has not within the previous 2-year period served, as a director, officer, or employee of any affiliate of the intermediate holding company that is not a subsidiary of the intermediate holding company.

(ii) No executive officer of an intermediate holding company or any subsidiary of an intermediate holding company may serve as a director, officer, or employee of an affiliate of the intermediate holding company that is not a subsidiary of the intermediate holding company.

(iii) The Board shall issue regulations that require effective legal and operational separation of the functions of an intermediate holding company from its affiliates that are not subsidiaries of such intermediate holding company, provided, however that such rules shall not require operational separation of internal functions including, but not limited to, human resources management, employee benefit plans, and information technology.

(J) SOURCE OF STRENGTH.—A company that directly or indirectly controls an intermediate holding company shall serve as a source of financial strength to its subsidiary intermediate holding company.

(K) ACTIVITIES CONDUCTED ABROAD.—Section 4 of the Bank Holding Company Act of 1956 shall not apply to any activities that a foreign financial holding company subject to stricter standards conducts solely outside the United States if such activities are conducted solely by a company or other entity that is located outside the United States.

(L) FLEXIBLE APPLICATION.—In applying the activity restrictions and ownership limitations of section 4 of the Bank Holding Company Act of 1956 to financial holding companies subject to stricter standards described in paragraph (1)(A), the Board shall flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the financial company subject to stricter standards so as to avoid unnecessary burden and expense.

(M) CONDUCT OF ACTIVITIES.—A company that is required to form an intermediate holding company shall conduct all such activities which are permissible for a financial holding company, as determined under section 4(k) of the Bank Holding Company Act of 1956, through such intermediate holding company, other than—

(i) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the intermediate company) may continue to engage in that activity so long as at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the intermediate company or undue systemic risk; and

(ii) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such intermediate holding company that is not a subsidiary of such intermediate holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to this paragraph.

(N) PROHIBITION ON CERTAIN ACTIVITIES.—An intermediate holding company shall be prohibited from conducting any nonbanking activities or investing in any nonbank companies other than those permissible for a financial holding company under sections 3 and 4 of the Bank Holding Company Act of 1956, unless the Board specifically determines otherwise in accordance with subparagraph (C), and provided that, for purposes of this paragraph, a company designated as an intermediate holding company and described under subparagraph (P) (or any permitted successor) is not prohibited from continuing to engage in any impermissible activity in which it was engaged continuously during the 6 months prior to the date of enactment, from owning any shares or types of assets related to such activity, or continuing to own such other shares or assets that it owned on the date of enactment.

(O) RULE OF CONSTRUCTION.—For purposes of this paragraph, designation of an already established intermediate company that will serve as the intermediate holding company shall satisfy the requirement to establish an intermediate holding company, provided that such existing intermediate holding company complies with all other provisions applicable to an intermediate holding company.

(P) LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.—A company that is not a bank holding company or treated as a bank holding company pursuant to section 8(a) of the International Bank Act of 1978 that has been notified that it is a financial holding company subject to stricter standards, pursuant to section 124 of the Financial Stability Improvement Act of 2010, shall—

(i) not be deemed to be, or treated as, a bank holding company, solely because of its ownership or control of an intermediate holding company; and

(ii) not be subject to the Bank Holding Company Act of 1956, except for such provisions as are explicitly made applicable in this paragraph.

(3) LEVERAGE LIMITATION.—

(A) IN GENERAL.—The Board shall require each financial holding company subject to stricter standards to maintain a debt to equity ratio of no more than 15 to 1, and the Board shall issue regulations containing procedures and timelines for how a financial holding company subject to stricter standards with a debt to equity ratio of more than 15 to 1 at the time such company becomes a financial holding company subject to stricter standards shall reduce such ratio.

(B) EXEMPTION.—The provisions of subparagraph (A) shall not apply to any Federal home loan bank.

SEC. 125. STRICTER PRUDENTIAL STANDARDS FOR CERTAIN FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.

(a) STRICTER PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—To mitigate risks to financial stability and the economy posed by a financial holding company that has been subjected to stricter prudential standards in accordance with section 124, the Board, as agent of the Council, shall impose stricter prudential standards on such company. Such standards shall be designed to maximize financial stability taking costs to long-term financial and economic growth into account, be heightened when compared to the standards that otherwise would apply to financial holding companies that are not subjected to stricter prudential standards pursuant to this subtitle (including by addressing additional or different types of risks than otherwise applicable standards), and reflect the potential risk posed to financial stability by the financial holding company subject to stricter standards.

(2) STANDARDS.—

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

(i) risk-based capital requirements and leverage limits, unless the Board determines that such requirements are not appropriate for a financial holding company subject to stricter standards because of such company's activities (such as investment company activities or assets under management) or structure, in which case the Board shall apply other standards that result in appropriately stringent controls.

(ii) liquidity requirements;

(iii) concentration requirements (as specified in subsection (c));

(iv) prompt corrective action requirements (as specified in subsection (e));

(v) resolution plan requirements (as specified in subsection (f)); and

(vi) overall risk management requirements.

(B) ADDITIONAL STANDARDS.—The heightened standards imposed by the Board under this section also may include short-term debt limits prescribed in accordance with subsection (d) and any other prudential standards that the Board deems advisable, including taking actions to mitigate systemic risk.

(C) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES AND THE FEDERAL INSURANCE OFFICE.—The Board, in developing stricter prudential standards under this subsection, shall consult with other Federal financial regulatory agencies with respect to any standard that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company that is subject to stricter prudential standards under this title. With respect to a financial holding company subject to stricter standards that is an insurance company or any insurance company subsidiary of such a financial holding company subject to stricter standards, the Board shall also consult with the Federal Insurance Office.

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this section, the Board—

(A) may differentiate among financial holding companies subject to stricter standards on an individual basis or by category, taking into consideration their capital structure, risk, complexity, financial activities, the financial activities of their subsidiaries, and any other factors that the Board deems appropriate; and

(B) shall take into consideration whether and to what extent a financial holding company subject to stricter standards that is not a bank holding company or treated as a bank holding company owns or controls a depository institution and shall adapt the prudential standards applied to such company as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which capital requirements are not appropriate.

(4) WELL CAPITALIZED AND WELL MANAGED.—A financial holding company subject to stricter standards shall at all times after it is subject to such standards be well capitalized and well managed as defined by the Board.

(5) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board shall prescribe regulations re-

garding the application of stricter prudential standards to a foreign financial parent and to a Federal or State branch, subsidiary, or operating entity that is owned or controlled by a foreign financial parent, giving due regard to principles of national treatment and equality of competitive opportunity and taking into account the extent to which the foreign financial parent is subject on a consolidated basis to home country standards comparable to those applied to financial holding companies in the United States.

(6) INCLUSION OF OFF BALANCE SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(A) IN GENERAL.—In the case of any financial holding company subject to stricter standards, the computation of capital requirements shall take into account off balance sheet activities for such a company.

(B) EXEMPTION.—If the Board determines that an exemption from the requirements under subparagraph (A) is appropriate, the Board may exempt a financial holding company subject to stricter standards from the requirements under subparagraph (A) or any transaction or transactions engaged in by such a company.

(C) OFF BALANCE SHEET ACTIVITIES DEFINED.—For purposes of this paragraph, the term ''off balance sheet activities'' means a liability that is not currently a balance sheet liability but may become one upon the happening of some future event, including the following transactions, to the extent they may create a liability:

(i) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(ii) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(iii) Risk participation in bankers' acceptances.

(iv) Sale and repurchase agreements.

(v) Asset sales with recourse against the seller.

(vi) Interest rate swaps.

(vii) Credit swaps.

(viii) Commodity contracts.

(ix) Forward contracts.

(x) Securities contracts.

(xi) Such other activities or transactions as the Board may, by rule, define.

(b) PRUDENTIAL STANDARDS AT FUNCTIONALLY REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSITORY INSTITUTIONS.—

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

(2) AGENCY AUTHORITY TO IMPLEMENT HEIGHTENED STANDARDS AND SAFEGUARDS.—Each Federal financial regulatory agency that receives a Board recommendation under paragraph (1) is au-

thorized to impose, require reports regarding, examine for compliance with, and enforce standards under this subsection with respect to the entities such agency regulates as described in section 116(b)(6). This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(3) IMPOSITION OF STANDARDS.—Standards imposed by a Federal financial regulatory agency under this subsection shall be the standards recommended by the Board in accordance with paragraph (1) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency and, with respect to an insurance company, the Federal Insurance Office.

(4) FEDERAL FINANCIAL REGULATORY AGENCY RESPONSE; NOTICE TO COUNCIL AND BOARD.—A Federal financial regulatory agency shall notify the Council and the Board in writing on whether and to

what extent the agency has imposed the stricter prudential standards described in paragraph (3) within 60 days of the Board's recommendation under paragraph (1). A Federal financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

(c) CONCENTRATION LIMITS FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

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

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each financial holding company subject to stricter standards from having credit exposure to any unaffiliated company that exceeds 25 percent of capital stock and surplus of the financial holding company subject to stricter standards, or such lower amount

as the Board may determine by regulation to be necessary to mitigate risks to financial stability.

(3) CREDIT EXPOSURE.—For purposes of this subsection and with respect to a financial holding company subject to stricter standards, the term ''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 of the financial holding company subject to stricter standards to the company;

(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 financial holding company subject to stricter standards and the company; and

(G) any other similar transactions that the Board 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 financial holding company subject to stricter standards with any person is deemed 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 may issue such regulations and orders, including definitions consistent with this subsection, as may be necessary to administer and carry out the purpose of this subsection.

(6) EXEMPTIONS.—

(A) IN GENERAL.—

(i) FEDERAL HOME LOAN BANKS.—This subsection shall not apply to any Federal home loan bank, but Federal home loan banks are not exempt from any other provision of this title except as specifically provided in this title.

(ii) APPLICABILITY TO OTHER ENTITIES.—The Federal National Mortgage Association and the Federal Home Loan

Mortgage Corporation are not exempt from any provision of this title except as specifically provided in this title.

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

(7) TRANSITION PERIOD.—This subsection and any regulations and orders of the Board under the authority of this subsection shall not take effect until the date that is 3 years from the date of the enactment of this subsection. The Board may extend the effective date for up to 2 additional years to promote financial stability.

(d) SHORT-TERM DEBT LIMITS FOR CERTAIN FINANCIAL HOLDING COMPANIES.—

(1) IN GENERAL.—In order to limit the risks that an overaccumulation of short-term debt could pose to financial holding companies and to the stability of the United States financial system, the Board may by regulation prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any fi-

nancial holding company subject to stricter standards for purposes of this title.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on a financial holding company's short-term debt as a percentage of its capital stock and surplus or on such other measure as the Board considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term ''short-term debt'' means such liabilities with short-dated maturity that the Board identifies by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board may prescribe such regulations, including definitions consistent with this subsection, and issue such orders as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a financial holding company that does not control an insured depository institu-

tion, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(e) PROMPT CORRECTIVE ACTION FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) PROMPT CORRECTIVE ACTION REQUIRED.— The Board shall take prompt corrective action to resolve the problems of financial holding companies subject to stricter standards. Except as specifically provided otherwise, this subsection shall apply only to financial holding companies that are incorporated or organized under United States laws.

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

(A) CAPITAL CATEGORIES.—

(i) WELL CAPITALIZED.—A financial holding company subject to stricter standards is ‘‘well capitalized’’ if it exceeds the required minimum level for each relevant capital measure.

(ii) UNDERCAPITALIZED.—A financial holding company subject to stricter standards is ‘‘undercapitalized’’ if it fails to meet the required minimum level for any relevant capital measure.

(iii) SIGNIFICANTLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure. The Board shall define by rule or regulation the term "significantly undercapitalized" at a threshold the Board determines to be prudent for the effective monitoring, management and oversight of the financial system.

(iv) CRITICALLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is "critically undercapitalized" if it fails to meet any level specified in paragraph (4)(C)(i).

(3) OTHER DEFINITIONS.—

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

(B) CAPITAL DISTRIBUTION.—The term ''capital distribution'' means—

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

(ii) a payment by a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance any person's acquisition of those shares or interests; and

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

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

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

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

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

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

(4) CAPITAL STANDARDS.—

(A) RELEVANT CAPITAL MEASURES.—

(i) IN GENERAL.—Except as provided in clause (ii)(II), the capital standards prescribed by the Board under section 125(a)(2) shall include—

(I) a leverage limit; and

(II) a risk-based capital requirement.

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

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

(II) rescind any relevant capital measure required under clause (i) upon determining that the measure is no longer an appropriate means for carrying out this section.

(B) CAPITAL CATEGORIES GENERALLY.—The Board shall, by regulation, specify for each relevant capital measure the levels at which a financial holding company subject to stricter standards is well capitalized, undercapitalized, and significantly undercapitalized.

(C) CRITICAL CAPITAL.—

(i) BOARD TO SPECIFY LEVEL.—

(I) LEVERAGE LIMIT.—The Board shall, by regulation, specify the ratio of tangible equity to total assets at which a financial holding company subject to stricter standards is critically undercapitalized.

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

(ii) LEVERAGE LIMIT RANGE.—The level specified under clause (i)(I) shall require tangible equity in an amount—

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

(II) except as provided in subclause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

(5) CAPITAL DISTRIBUTIONS RESTRICTED.—

(A) IN GENERAL.—A financial holding company subject to stricter standards shall make no capital distribution if, after making the distribution, the financial holding company subject to stricter standards would be undercapitalized.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Board may permit a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the financial holding company subject to stricter standards in at least an equivalent amount; and

(ii) will reduce the financial obligations of the financial holding company subject to stricter standards or otherwise improve the financial condition of the financial holding company subject to stricter standards.

(6) PROVISIONS APPLICABLE TO UNDERCAPITALIZED FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) MONITORING REQUIRED.—The Board shall—

(i) closely monitor the condition of any undercapitalized financial holding company subject to stricter standards;

(ii) closely monitor compliance by any undercapitalized financial holding company subject to stricter standards with capital restoration plans, restrictions, and requirements imposed under this section; and

(iii) periodically review the plan, restrictions, and requirements applicable to any undercapitalized financial holding company subject to stricter standards to determine whether the plan, restrictions, and requirements are effective.

(B) CAPITAL RESTORATION PLAN REQUIRED.—

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

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

(I) specify—

(aa) the steps the financial holding company subject to stricter standards will take to become well capitalized;

(bb) the levels of capital to be attained by the financial holding company subject to stricter standards during each year in which the plan will be in effect;

(cc) how the financial holding company subject to stricter standards will comply with the restrictions or requirements then in effect under this section; and

(dd) the types and levels of activities in which the financial holding company subject to stricter standards will engage; and

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

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

(I) complies with clause (ii);

(II) is based on realistic assumptions, and is likely to succeed in restoring the capital of the financial holding company subject to stricter standards; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the financial holding company subject to stricter standards is exposed.

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

(I) provide financial holding companies subject to stricter standards with reasonable time to submit capital restoration plans, and generally require a financial holding company subject to stricter standards to submit a plan not later than 45 days after it becomes undercapitalized; and

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

(C) ASSET GROWTH RESTRICTED.—An undercapitalized financial holding company subject to stricter standards shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards;

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

(iii) the ratio of tangible equity to total assets of the financial holding company subject to stricter standards increases during the calendar quarter at a rate sufficient to enable it to become well capitalized within a reasonable time.

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

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards, the financial holding company subject to stricter standards is implementing the plan, and the Board determines that the proposed action is consistent with and will further the achievement of the plan;

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

(iii) the Board has exempted the financial holding company subject to stricter standards from the requirements of this paragraph with respect to the class of acquisitions that includes the proposed action.

(E) DISCRETIONARY SAFEGUARDS.—The Board may, with respect to any undercapitalized financial holding company subject to stricter standards, take actions described in any clause of paragraph (7)(B) if the Board determines that those actions are necessary. The Board, in determining whether to impose any requirement under this subparagraph that is likely to have a significant effect on a functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary of a financial holding company subject to stricter standards, shall consult with the primary financial regulatory agency for such subsidiary. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.

(7) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS AND UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(A) IN GENERAL.—This paragraph shall apply with respect to any financial holding company subject to stricter standards that—

(i) is significantly undercapitalized; or

(ii) is undercapitalized and—

(I) fails to submit an acceptable capital restoration plan within the time allowed by the Board under paragraph (6)(B)(iv); or

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

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

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

(I) Requiring the financial holding company subject to stricter standards to sell enough shares or obligations of the financial holding company subject to stricter standards so that the financial holding company subject to stricter standards will be well capitalized after the sale.

(II) Further requiring that instruments sold under subclause (I) be voting shares.

(III) Requiring the financial holding company subject to stricter standards to be acquired by or combine with another company.

(ii) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

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

(II) Further restricting the transactions of the financial holding company subject to stricter standards with affiliates and insiders.

(iii) RESTRICTING ASSET GROWTH.—Restricting the asset growth of the financial holding company subject to stricter standards more stringently than paragraph (6)(C), or requiring the financial holding company subject to stricter standards to reduce its total assets.

(iv) RESTRICTING ACTIVITIES.—Requiring the financial holding company subject to stricter standards or any of its subsidiaries to alter, reduce, or terminate any activity that the Board determines poses excessive risk to the financial holding company subject to stricter standards.

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

(I) NEW ELECTION OF DIRECTORS.—Ordering a new election for the board of directors of the financial holding company subject to stricter standards.

(II) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the financial holding company subject to stricter standards became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(III) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

(vi) REQUIRING DIVESTITURE.—Requiring the financial holding company subject to stricter standards to divest itself of or liquidate any subsidiary if the Board determines that the subsidiary is in danger of becoming insolvent, poses a significant risk to the financial holding company subject to stricter standards, or is likely to cause a significant dissipation of the assets or earnings of the financial holding company subject to stricter standards.

(vii) REQUIRING OTHER ACTION.—Requiring the financial holding company subject to stricter standards to take any other action that the Board determines will better carry out the purpose of this section than any of the actions described in this subparagraph.

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

(i) The action described in subclause (I) or (III) of subparagraph (B)(i) (relating to requiring the sale of shares or obligations, or requiring the financial holding company subject to stricter standards to be acquired by or combine with another company).

(ii) The action described in subparagraph (B)(ii) (relating to restricting transactions with affiliates).

(D) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

(i) IN GENERAL.—The financial holding company subject to stricter standards shall not do any of the following without the prior written approval of the Board:

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

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

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

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

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

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

(i) if the financial holding company subject to stricter standards is well capitalized, require the financial holding company subject to stricter standards to comply with one or more provisions of paragraphs (6) and (7), as if the institution were undercapitalized; or

(ii) if the financial holding company subject to stricter standards is undercapitalized, take any one or more actions authorized under paragraph (7)(B) as if the financial holding company subject to stricter standards were significantly undercapitalized, after consultation with the primary financial regulatory agency for any functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary that is likely to be significantly affected by such actions. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.

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

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

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

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

(12) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

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

(B) PROCEDURE.—

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

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

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

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

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

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

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

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

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

(III) notify the petitioner of the order.

(C) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the ability of the financial holding company subject to stricter standards—

(i) to become well capitalized, to the extent that the order is based on the capital level of the financial holding company subject to stricter standards or such company's failure to submit or implement a capital restoration plan; and

(ii) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on paragraph (8)(A).

(13) ENFORCEMENT AUTHORITY FOR FOREIGN FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) TERMINATION AUTHORITY.—If the Board believes that a condition, practice, or activity of a foreign financial holding company subject to stricter standards does not comply with this title or the rules or orders prescribed by the Board under this title or otherwise poses a threat to financial stability, the Board may, after notice and opportunity for a hearing, take such actions as necessary to mitigate such risk, including ordering a foreign financial holding company subject to stricter standards in the United States to terminate the activities of such branch, agency, or subsidiary.

(B) DISCRETION TO DENY HEARING.—The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

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

(1) IN GENERAL.—The Board shall require each financial holding company subject to stricter standards incorporated or organized in the United States to report periodically to the Board on—

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

(B) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies; and

(C) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards.

(2) NO LIMITING EFFECT.—A rapid resolution plan submitted in accordance with this subsection shall not be binding on a receiver appointed under title II, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(3) REPORTING TRIGGERED BY STRESS TEST RESULTS.—

(A) FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a quarterly stress test under baseline or adverse conditions conducted by a financial holding company subject to stricter standards under section 132(a) or the results of a stress test of that financial holding company subject to stricter standards conducted by the Board under subsection (g) indicate that the financial holding company subject to stricter standards is, in the determination of the Board, significantly or critically undercapitalized, that financial holding company subject to stricter standards shall submit a rapid resolution plan in accordance with this subsection that has been revised to address the causes of those results.

(B) FINANCIAL COMPANIES THAT ARE NOT FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a semiannual stress test under baseline or adverse conditions conducted by a financial company under section 132(b) indicate that the financial company is, in the determination of the Board, significantly or critically undercapitalized, that financial company shall be required to report under this subsection. The Board shall prescribe regulations establishing expedited procedures for such reporting.

(C) TRANSPARENCY.—Any rapid resolution plan submitted pursuant to this paragraph shall be subject to any restrictions regarding the disclosure of any other rapid resolution plan submitted pursuant to this subsection.

(g) STRESS TESTS.—

(1) The Board, in coordination with the appropriate primary financial regulatory agency, shall conduct annual stress tests of each financial holding company subject to stricter standards. The Board

may, as the Board determines appropriate, conduct stress tests of financial companies that are not financial holding companies subject to stricter standards. The Board shall publish a summary of the results of such stress tests.

(2) The Board shall issue regulations to define the term ''stress test'' for purposes of this subsection. Such a definition shall provide for not less than 3 different sets of conditions under which a stress test should be conducted: baseline, adverse, and severely adverse scenarios.

(h) AVOIDING DUPLICATION.—The Board shall take any action the Board deems appropriate to avoid imposing duplicative requirements under this subtitle for financial holding companies subject to stricter standards that are also bank holding companies.

(i) RESOLUTION PLANS REQUIRED.—

(1) IN GENERAL.—The Corporation and the Board, after consultation with the Council, shall jointly issue regulations requiring financial holding companies subject to stricter standards to develop plans designed to assist in the rapid and orderly resolution of the company.

(2) STANDARDS FOR RESOLUTION PLANS.—The regulations required by paragraph (1) shall—

(A) define the scope of financial holding companies subject to stricter standards covered by these requirements and may exempt financial holding companies subject to stricter standards from the requirements of this subsection if the Corporation and the Board jointly determine that exemption is consistent with the purposes of this title;

(B) require each plan to demonstrate that any insured depository institution affiliated with a financial holding company subject to stricter standards is adequately insulated from the activities of any non-bank subsidiary of the institution or financial holding companies subject to stricter standards;

(C) require that each plan include information detailing—

(i) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies;

(ii) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards;

(iii) full descriptions of the financial holding company subject to stricter standards' ownership structure, assets, liabilities, and contractual obligations; and

(iv) the cross-guarantees tied to different securities, a list of major counterparties, and a process for determining where the financial holding company subject to stricter standards' collateral is pledged; and

(D) establish such other standards as the Corporation and the Board may jointly deem necessary to carry out this subsection.

(3) REVIEW OF PLANS.—

(A) SUBMISSION OF PLANS.—Each financial holding company subject to stricter standards that is subject to the requirement under paragraph (1) shall submit its plan to the Corporation and the Board.

(B) REVIEW.—Upon the submission of a plan pursuant to subparagraph (A), and not less often than annually thereafter, the Corporation and the Board, after consultation with any Federal financial regulatory agencies with jurisdiction over the financial holding company subject to stricter standards (and, if the financial holding company subject to stricter standards is an insurance company, the Federal Insurance Office), shall jointly review such plan and may require a financial holding company subject to stricter standards to revise its plan consistent with the standards established pursuant to paragraph (2).

(4) ENFORCEMENT.—

(A) IN GENERAL.—The Corporation, after consultation with the Board, shall have the authority to take any enforcement action in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) against any financial holding company subject to stricter standards that fails to comply with the requirements of this section or any regulations issued pursuant to this section.

(B) NO LIMITATION ON BOARD AUTHORITY.—Nothing under this subsection shall be construed as limiting any enforcement authority available to the Board under any other provision of law.

(5) NO LIMITING EFFECT ON RECEIVER.—A rapid resolution plan submitted under this section

shall not be binding on a receiver appointed under title II, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(6) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted under this section.

(j) RULE OF CONSTRUCTION REGARDING CONSUMER PROTECTION STANDARDS.—The prudential standards imposed or recommended by the Board or the Council under this section shall not be construed as superseding—

(1) any consumer protection standards promulgated under a State or Federal consumer protection law, including the Consumer Financial Protection Agency Act and the Federal Trade Commission Act; or

(2) any investor protection standard that protects consumers (including public reporting requirements) imposed under State or Federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1944, and the Investment Advisors Act of 1944.

(k) RULEMAKING AUTHORITY.—The Board may prescribe such regulations and issue such orders as the Board, in consultation with the Council, determines to be necessary to carry out the provisions of this subtitle.

SEC. 126. MITIGATION OF SYSTEMIC RISK.

(a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS AND ACTIVITIES.—If the Council determines, after notice and an opportunity for hearing, that despite the higher prudential standards imposed pursuant to section 125(a)(2), the size of a financial holding company subject to stricter standards or the scope, nature, scale, concentration, interconnectedness, or mix of activities directly or indirectly conducted by a financial holding company subject to stricter standards poses a grave threat to the financial stability or economy of the United States, the Council shall require the company to undertake 1 or more mitigatory actions described in subsection (d).

(b) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Council, in determining whether to impose any requirement under this section that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company subject to stricter standards under this title, shall consult with the Federal financial regulatory agency for any such subsidiary. With respect to any requirements under this section that is likely to have a significant effect on an insurance company, the Council shall consult with the Federal Insurance Office.

(c) FACTORS FOR CONSIDERATION.—In reaching a determination described in subsection (a), the Council shall take into consideration the following factors, as appropriate—

(1) the amount and nature of the company's financial assets;

(2) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(3) the extent and nature of the company's off-balance sheet exposures;

(4) the company's reliance on leverage;

(5) the extent and nature of the company's transactions, relationships, and interconnectedness with other financial and non-financial companies;

(6) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(7) the scope, nature, size, scale, concentration, interconnectedness and mix of the company's activities;

(8) the extent to which prudential regulations mitigate the risk posed; and

(9) any other factors identified that the Council determines appropriate.

(d) MITIGATORY ACTIONS.—

(1) IN GENERAL.—Mitigatory action may include—

(A) modifying the stricter prudential standards imposed pursuant to section 125(a);

(B) terminating 1 or more activities;

(C) imposing conditions on the manner in which a financial holding company subject to stricter standards conducts 1 or more activities;

(D) limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(E) restricting the ability to offer a financial product or products; and

(F) in the event the Council deems subparagraphs (A) through (E) inadequate as a means to address the identified risks, selling, divesting, or otherwise transferring business units, branches, assets, or off-balance sheet items to unaffiliated companies.

(2) INTERNATIONAL COMPETITIVENESS CONSIDERATIONS.—In making any decision pursuant to paragraph (1), the Council shall consider—

(A) the need to maintain the international competitiveness of the United States financial services industry; and

(B) the extent to which other countries with a significant financial services industry have established corresponding regimes to mitigate threats to financial stability or the economy posed by financial companies.

(e) DUE PROCESS.—

(1) NOTICE AND HEARING.—The Council shall give notice to a financial holding company subject to stricter standards, and opportunity for hearing if requested, that the financial holding company subject to stricter standards is being considered for mitigatory action pursuant to subsection (a). The hearing shall occur no later than 30 days after the financial company receives notice of the proposed action from the Council.

(2) NOTICE.—The Council shall notify the financial holding company subject to stricter standards of the Council's determination, and, if the Council determines that mitigatory action is appro-

priate, require the company to submit a plan to the Council to implement the required mitigatory action.

(3) SUBMISSION OF PLAN.—The financial holding company subject to stricter standards shall submit its proposed plan to implement the required mitigatory action or actions to the Council within 60 days from the date it receives notice under paragraph (2) or such shorter timeframe as the Council may require, if the Council determines an emergency situation merits expeditious implementation.

(4) APPROVAL OR AMENDMENT OF THE PLAN.—The Council shall review the plan submitted pursuant to paragraph (3) and determine whether the plan achieves the goal of mitigating a grave threat to the financial stability or the economy of the United States. The Council may approve or disapprove the plan with or without amendment.

(5) EFFECT OF PLAN APPROVAL.—The Council shall—

(A) notify a financial holding company subject to stricter standards by order, which shall be public, that the Council has approved the plan with or without amendment; and

(B) direct the Board to require a financial holding company subject to stricter standards to comply with the plan to implement mitigatory action or actions within a reasonable timeframe after the Council's approval and in accordance with such deadlines established in the plan.

(f) TREASURY SECRETARY CONCURRENCE.—Mitigatory action imposed by the Council involving the sale, divestiture, or transfer of more than $10,000,000,000 in total assets by a financial holding company subject to stricter standards shall require the Secretary of the Treasury's concurrence before the issuance of the notice in subsection (e)(5)(A). If the sale, divestiture, or transfer of total assets by a financial holding company subject to stricter standards exceeds $100,000,000,000, the Secretary of the Treasury shall consult with the President before concurrence. The aforementioned amounts shall be indexed to inflation.

(g) FAILURE TO IMPLEMENT THE PLAN.—If a financial holding company subject to stricter standards fails to implement a plan for mitigatory action imposed pursuant to this section within a reasonable timeframe, the Council shall direct the Board to take such actions as necessary to ensure compliance with the plan.

(h) JUDICIAL REVIEW.—For any plan required under this section, a financial holding company subject to stricter standards may, not later than 30 days after receipt of the Council's notice under subsection (e)(2), bring an action in the United States district court for the judicial district in which the home office of such company is located, or in the United States District Court for the District of Columbia, for an order requiring that the requirement for a mitigatory action be rescinded. Judicial review under this section shall be limited to the imposition of a mitigatory action pursuant to subsection (e)(5). In reviewing the Council's imposition of a mitigatory action, the court shall rescind or dismiss only those mitigatory actions it finds to be imposed in an arbitrary and capricious manner.

(i) RULE OF CONSTRUCTION.—Nothing in subsection (h) shall be construed as limiting the authority of a Federal financial regulatory agency to take action with respect to a financial company subject to the jurisdiction of such agency pursuant to applicable law other than this section.

SEC. 127. SUBJECTING ACTIVITIES OR PRACTICES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may subject a financial activity or practice to stricter prudential standards under this subtitle if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial institutions or markets and local, minority, or underserved communities, and thereby threaten the stability of the financial system or economy.

(b) PERIODIC REVIEW OF ACTIVITY IDENTIFICATIONS.—

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

(2) REVIEW AND RECISION.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial activity subjected to stricter prudential standards continues to merit stricter prudential standards; and

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

(c) PROCEDURE FOR SUBJECTING OR CEASING TO SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRUDENTIAL STANDARDS.—

(1) COUNCIL AND BOARD COORDINATION.—The Council shall inform the Board if the Council is considering whether to subject or cease to subject an activity to stricter prudential standards in accordance with this section.

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

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

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

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

SEC. 128. STRICTER REGULATION OF ACTIVITIES AND PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) PRUDENTIAL STANDARDS.—

(1) BOARD AUTHORITY TO RECOMMEND.—

(A) IN GENERAL.—To mitigate the risks to United States financial stability and the United States economy posed by financial activities and practices that the Council identifies for stricter prudential standards under section 127 the Board, as agent of the Council, shall recommend prudential standards to the appropriate primary financial regulatory agencies to apply to such identified activities and practices.

(B) CONSULTATION WITH PRIMARY FINANCIAL REGULATORY AGENCIES.—The Board, in developing recommendations under this subsection, shall consult with the relevant primary financial regulatory agencies with respect to any standard that is likely to have a significant effect on entities described in section 101(b)(6). With respect to any standard that is likely to have a significant effect on insurance companies, the Board also shall consult with the Federal Insurance Office.

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

(A) shall be designed to maximize financial stability, taking costs to long-term financial and 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, nature, size, scale, concentration, or interconnectedness, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice altogether.

(3) EXCEPTION.—The standards recommended by the Board and adopted by a primary financial regulatory agency pursuant to this section shall not apply to activities that a foreign financial parent conducts solely outside the United States if such activities are conducted solely by a company or other operating entity that is located outside the United States.

(b) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—Each primary financial regulatory agency is authorized to impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities described in section 101(b)(6) for which it is the primary financial regulatory agency. This authority is in addition to and does not limit any other authority of the primary financial regulatory agencies. 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 primary financial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

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

(3) PRIMARY FINANCIAL REGULATORY AGENCY RESPONSE.—A primary financial regulatory agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (2) within 60 days of the Board's recommendation. A primary financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

SEC. 129. EFFECT OF RESCISSION OF IDENTIFICATION.

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

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

SEC. 130. EXAMINATIONS AND ENFORCEMENT ACTIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.

(a) EXAMINATIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking "whenever the Board of Directors determines" and all that follows through the period and inserting "or financial holding company subject to stricter standards (as defined in section 101(b)(5) of the Financial Stability Improvement Act of 2010) whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance or such financial holding company subject to stricter standards for resolution purposes.".

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

(1) in paragraph (2)—

(A) at the end of subparagraph (B), by striking "or";

(B) at the end of subparagraph (C), by striking the period and inserting "; or"; and

(C) by inserting at the end the following new subparagraph:

"(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund."; and

(2) by adding at the end the following new paragraph:

"(6) For purposes of this subsection:

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

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

SEC. 131. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.

(a) STUDY REQUIRED.—The Chairman of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the effect on the efficiency of capital markets, costs imposed on the financial sector, and on national economic growth, of—

(1) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(2) limits on the organizational complexity and diversification of large financial institutions;

(3) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(4) limits on risk transfer between business units of large financial institutions;

(5) requirements to carry contingent capital or similar mechanisms;

(6) limits on commingling of commercial and financial activities by large financial institutions;

(7) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(8) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

The study shall include recommendations for the optimal structure of any limits considered in paragraphs (1) through (5) in order to maximize their effectiveness and minimize their economic impact.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

SEC. 132. STRESS TESTS.

(a) A financial holding company subject to stricter standards shall—

(1) conduct quarterly stress tests; and

(2) submit a report on its quarterly stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(b) A financial company that has more than $10,000,000,000 in total assets and is not a financial holding company subject to stricter standards shall—

(1) conduct semiannual stress tests; and

(2) submit a report on its semiannual stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(c) A stress test under this section shall provide for testing under each of the following sets of conditions:

(1) Baseline.

(2) Adverse.

(3) Severely adverse.

(d) The head of each primary financial regulatory agency, in coordination with the Board, shall issue regulations to define the term ''stress test'' for purposes of this section.

SEC. 133. CONTINGENT CAPITAL.

(a) IN GENERAL.—The Board, in coordination with the appropriate primary financial regulatory agency, may, after notice and opportunity for comment, promulgate regulations that require a financial holding company subject to stricter standards to maintain a minimum amount of long-term hybrid debt that is convertible to equity when—

(1) the Board determines that a specified financial company fails to meet prudential standards established by the Board; or

(2) the Board has determined that threats to United States financial system stability make such a conversion necessary.

(b) FACTORS TO CONSIDER.—In establishing regulations under this section, the Board shall consider—

(1) an appropriate transition period for implementation of a conversion under this section;

(2) capital requirements applicable to the specified financial company and its subsidiaries; and

(3) any other factor that the Board deems appropriate.

(c) STUDY REQUIRED.—The Chairman of the Council shall carry out a study to determine an optimal implementation of contingent capital requirements to maximize financial stability, minimize the probability of drawing on the Orderly Liquidation Fund established under section 210(n) in a financial crisis, and minimize costs for financial holding companies subject to stricter standards. To the extent practicable, the study shall take place with input from industry participants and international financial regulators. Such study shall include—

(1) an evaluation of the characteristics and amounts of convertible debt that should be required, including possible tranche structure;

(2) an analysis of possible trigger mechanisms for debt conversion, including violation of regulatory capital requirements, failure of stress tests, declaration of systemic emergency by regulators, market-based triggers and other trigger mechanisms;

(3) an estimate of the costs of carrying contingent capital;

(4) an estimate of the effectiveness of contingent capital requirements in reducing losses to the systemic resolution fund in cases of single-firm or systemic failure; and

(5) recommendations for implementing legislation.

(d) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (c).

SEC. 134. RESTRICTION ON PROPRIETARY TRADING BY DESIGNATED FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—If the Board determines that propriety trading by a financial holding company subject to stricter standards poses an existing or foreseeable threat to the safety and soundness of such company or to the financial stability of the United States, the Board may prohibit such company from engaging in propriety trading.

(b) EXCEPTIONS PERMITTED.—The Board may exempt from the prohibition of subsection (a) proprietary trading that the Board determines to be ancillary to other operations of such company and not to pose a threat to the safety and soundness of such company or to the financial stability of the United States, including—

(1) making a market in securities issued by such company;

(2) hedging or managing risk;

(3) determining the market value of assets of such company; and

(4) propriety trading for such other purposes allowed by the Board by rule.

(c) RULEMAKING AUTHORITY.—The primary financial regulatory agencies of banks and bank holding companies shall jointly issue regulations to carry out this section.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect after the end of the 180-day period beginning on the date of the enactment of this title.

(e) PROPRIETARY TRADING DEFINED.—For purposes of this section and with respect to a company, the term ''proprietary trading'' means the trading of stocks, bonds, options, commodities, derivatives, or other financial instruments with the company's own money and for the company's own account.

SEC. 135. RULE OF CONSTRUCTION.

(a) CONSTRUCTION.—The authorities granted to agencies under this subtitle are in addition to any rulemaking, report-related, examination, enforcement, or other authority that such agencies may have under other law and in no way shall be construed to limit such other authority, except that any standards imposed for financial stability purposes under this subtitle shall supersede any conflicting less stringent requirements of the primary financial regulatory agency but only the extent of the conflict.

(b) AGENT RESPONSIBILITIES.—For purposes of this subtitle, the term ''agent'' means the Board acting under section 124(c) and coordinating with the Council in exercising authority under sections 125 and 128.

SEC. 136. ANTITRUST SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to modify, impair, or supercede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ''antitrust laws'' has the 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 relates to unfair methods of competition.

Subtitle C—International Policy Coordination

SEC. 141. INTERNATIONAL POLICY COORDINATION.

The President of the United States, or a designee of the President, shall coordinate through all available international policy channels similar policies as found in United States law related to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy.

Subtitle D—Access by Foreign Institutions

SEC. 151. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.

(a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Subsection 7(d)(3) of the International Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) for a foreign bank that presents a systemic risk to the United States, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such systemic risk.".

(b) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Subsection 7(e)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(3) by inserting after subparagraph (B), the following new subparagraph:

"(C) for a foreign bank that presents a systemic risk to the United States, the home country of the foreign bank has not adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.".

(c) REGISTRATION OR SUCCESSION TO UNITED STATES BROKERAGE OR DEALER AND TERMINATION OF SUCH REGISTRATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

"(k) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Securities and Exchange Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a systemic risk to the United States, the home country of the foreign person has adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.

"(l) TERMINATION OF A UNITED STATES BROKER OR DEALER.—For a foreign person or an affiliate of a foreign person that presents such a systemic risk to the United States, the Securities and Exchange Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such systemic risk.''.

Page 124, after line 2, insert the following:

Subtitle E—Additional Requirements

Page 125, after line 14, insert the following new paragraph:

(3) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term ''depository institution holding company'' has the meaning given such term under section 3(w) of the Federal Deposit Insurance Act.

Page 126, after line 20, insert the following new paragraphs (and redesignate the subsequent paragraph accordingly):

(3) INVESTMENTS IN FINANCIAL SUBSIDIARIES.—For purposes of this section, investments in

financial subsidiaries that insured depository institutions must deduct from regulatory capital under section 5136A of the Revised Statutes or section 46(a)(2) of the Federal Deposit Insurance Act need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies identified under section 113, unless such capital deduction is required by the Board of Governors of the Federal Reserve System or the primary financial regulatory agency in the case of nonbank financial companies identified under section 113.

(4) EFFECTIVE DATE AND PHASE-IN PERIODS.—

(A) For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies, or by nonbank financial companies identified under section 113, this section is effective as of May 19, 2010.

(B) In general, and other than as provided for in paragraph (5), for debt or equity instruments issued before May 19, 2010, by depository institution holding companies, or by nonbank financial companies identified under section 113, any regulatory capital deductions required under this section will be phased in incrementally over a period of three years, with the phase-in period to begin on January 1, 2013, except in the situations described in subparagraph (C).

(C) For any other depository institution holding company that was not supervised by the Board of Governors of the Federal Reserve System as of May 19, 2010, the requirements of this section, except the requirements in subparagraphs (A) and (B), shall be effective five years from the date of the enactment of this title.

(D) For bank holding company subsidiaries, organized under the laws of any State, of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors of the Federal Reserve System (as in effect on May 19, 2010), the requirements of this section, except the requirements in subparagraph (A), shall be effective five years from the date of the enactment of this title.

(5) EXCEPTIONS.—This section shall not—

(A) apply to any Federal home loan bank;

(B) affect small bank holding companies subject to the Small Bank Holding Company Policy Statement of the Board of Governors of the Federal Reserve System as in effect on May 19, 2010;

(C) affect the capital treatment of any debt or equity security issued on or before May 19, 2010 for depository institution holding companies with total consolidated assets of less than $15 billion as of the date of the enactment of this title, and for organizations that were mutual holding companies on May 19, 2010;

(D) be construed as preventing the appropriate Federal banking agency from amending its capital adequacy guidelines or regulations in a way that would affect the capital treatment of any debt or equity security;

(E) apply to any depository institution holding company or financial holding companies subject to stricter standards under section 125 if—

(i) the company is predominantly engaged in insurance, investment company activities, or asset management; and

(ii) the Board of Governors of the Federal Reserve System determines that risk-based capital requirements and leverage limits are not appropriate for such company because of such company's activities (such as investment company activities or asset management) or structure, provided that the Board of Governors of the Federal Reserve System hall in such case apply other standards that result in appropriately stringent controls.