

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:

1 (11) FINANCIAL COMPANY.—The term “finan-
2 cial company” means any company that—

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

5 (B) is—

6 (i) any bank holding company as de-
7 fined in section 2(a) of the Bank Holding
8 Company Act of 1956 (12 U.S.C.
9 1841(a));

10 (ii) any company that has been sub-
11 jected to stricter prudential regulation
12 under section 124;

13 (iii) any insurance company;

14 (iv) any company predominantly en-
15 gaged in activities that are financial in na-
16 ture or incidental thereto for purposes of
17 section 4(k) of the Bank Holding Company
18 Act of 1956 (12 U.S.C. 1843(k)) or activi-

1 ties that have been identified for stricter
2 prudential standards under section 124; or

3 (v) any subsidiary of companies de-
4 scribed in clauses (i) through (iv) (other
5 than an insured depository institution or
6 any broker or dealer registered with the
7 Commission under section 15(b) of the Se-
8 curities Exchange Act of 1934 (15 U.S.C.
9 78o(b)) that is a member of the Securities
10 Investor Protection Corporation);

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

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

19 (E) is not an insured depository institution
20 (as defined in section 3(c) of the Federal De-
21 posit Insurance act), a Federal credit union or
22 a State-chartered credit union (as such terms
23 are defined in section 101 of the Federal Credit
24 Union Act), or a government-sponsored enter-
25 prise (as such term is defined in section 1004(f)

1 of the Financial Institutions Reform, Recovery
2 and Enforcement Act of 1989 (12 U.S.C. 1811
3 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:

4 (C) CASES INVOLVING INSURANCE COMPA-
5 NIES.—In the case of an insurance company, or
6 in which the largest United States subsidiary
7 (as measured by total assets as of the end of
8 the previous calendar quarter) of a financial
9 company is an insurance company, the applica-
10 ble State insurance authority of the State in
11 which the insurance company is domiciled and
12 the Board of Governors, at the request of the
13 Secretary or on their own initiative, shall con-
14 sider whether to make the written recommenda-
15 tion described in paragraph (2) with respect to
16 the financial company. Subject to the require-
17 ments in paragraph (2), such recommendation

1 shall be made upon a vote of not fewer than $\frac{2}{3}$
2 of the Board of Governors then serving and the
3 affirmative approval of the insurance authority,
4 and in consultation with the Corporation.

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

5 (1) IN GENERAL.—Notwithstanding subsection
6 (b), if an insurance company is a covered financial
7 company or a subsidiary or affiliate of a covered fi-
8 nancial company, the insolvency, liquidation, or re-
9 habilitation of such insurance company, and any
10 subsidiary or affiliate of such company that is not
11 excepted under paragraph (2), shall be conducted as
12 provided under State law, and the assets of such in-
13 surance company, including the value of any solvent
14 subsidiary of such insurance company, shall be used
15 for the protection of policy holders.

16 (2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-
17 ATES.—The requirement of paragraph (1) regarding
18 application of State insolvency laws shall not apply
19 with respect to any subsidiary or affiliate of an in-
20 surance company that is not itself an insurance com-
21 pany.

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 (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 (2) ORDERLY LIQUIDATION PLAN.—Amounts in
3 the Fund shall be available to the Corporation with
4 regard to a covered financial company for which the
5 Corporation is appointed receiver after the Corpora-
6 tion has developed an orderly liquidation plan that
7 is acceptable to the Secretary with regard to such
8 covered financial company, including the provision
9 and use of funds, including taking any actions speci-
10 fied under section 204(d) and subsection
11 (h)(2)(G)(iv) and (h)(9) of this section, and pay-
12 ments to third parties. The orderly liquidation plan
13 shall take into account actions to avoid or mitigate

1 potential adverse effects on low income, minority, or
2 underserved communities affected by the failure of
3 the covered financial company, and shall provide for
4 coordination with the primary financial regulatory
5 agencies, as appropriate, to ensure that such actions
6 are taken. The Corporation may, at any time, amend
7 any orderly liquidation plan approved by the Sec-
8 retary 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 redesign-
nate subsequent subsections accordingly):

9 (n) SYSTEMIC DISSOLUTION FUND.—

10 (1) ESTABLISHMENT AND PURPOSE.—

11 (A) IN GENERAL.—There is established in
12 the Treasury a separate fund to be known as
13 the “Systemic Dissolution Fund”—

14 (i) to facilitate and provide for the or-
15 derly and complete dissolution of any failed
16 financial company or companies that pose
17 a systemic threat to the financial markets
18 or economy, as determined under section
19 203(b); and

20 (ii) to ensure that any taxpayer funds
21 utilized to facilitate such liquidations are
22 fully repaid from assessments levied on fi-

1 nancial companies that have assets of
2 \$50,000,000,000, adjusted for inflation, or
3 more.

4 (B) ADJUSTMENT OF THRESHOLD.—The
5 threshold referred to in subparagraph (A)(ii)
6 shall be adjusted on an annual basis, based on
7 the growth of assets owned or managed by fi-
8 nancial companies (as defined in section
9 201(a)(10)).

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

13 (A) impose assessments on covered finan-
14 cial companies in accordance with paragraphs
15 (6) through (8);

16 (B) maintain and administer the Fund in
17 a manner so as to make clear to the general
18 public that such Fund is unrelated to any other
19 Fund maintained and administered by the Cor-
20 poration, including the Deposit Insurance
21 Fund;

22 (C) utilize the Fund to facilitate the dis-
23 solution of a covered financial company (as de-
24 fined by section 201(a)(7)) as provided in para-

1 graph (3), or take such other actions as are au-
2 thorized by this subtitle;

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

6 (E) exercise borrowing authority as pre-
7 scribed in subsection (o).

8 (3) USES.—

9 (A) The Fund shall be available to the
10 Corporation for use with respect to the dissolu-
11 tion of a covered financial company to—

12 (i) cover the costs incurred by the
13 Corporation, including as receiver, in exer-
14 cising its rights, authorities, and powers
15 and fulfilling its obligations and respon-
16 sibilities under this section;

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

19 (iii) cover the costs of systemic sta-
20 bilization actions, pursuant to section
21 204(d).

22 (B) The Fund shall not be used in any
23 manner to benefit any officer or director of
24 such company removed pursuant to section
25 206(a)(5).

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

4 (5) SIZE OF FUND.—The Corporation shall, by
5 rule, establish the minimum size of the Fund con-
6 sistent with subparagraphs (D) and (E) of para-
7 graph (6).

8 (6) ASSESSMENTS.—

9 (A) ASSESSMENTS TO MAINTAIN FUND.—
10 The Corporation shall impose risk-based assess-
11 ments on financial companies in such amount
12 and manner and subject to such terms and con-
13 ditions that the Corporation determines, by reg-
14 ulation and in consultation with the Council,
15 are necessary for the amount in the Fund to at
16 least equal the minimum size established pursu-
17 ant to paragraph (5).

18 (B) ASSESSMENTS TO REPLENISH THE
19 FUND.—If the Fund falls below the minimum
20 size established pursuant to paragraph (5), the
21 Corporation shall impose assessments on finan-
22 cial companies in such amounts and manner
23 and subject to such terms and conditions as the
24 Corporation determines, by regulation and in
25 consultation with the Council, are necessary to

1 replenish the fund subject to the limitations in
2 subparagraph (E).

3 (C) OTHER ASSESSMENTS.—When assess-
4 ments are required for the purpose of repaying
5 amounts owed to Treasury, the Corporation
6 shall—

7 (i) before assessing any financial com-
8 pany, impose assessments, as soon as prac-
9 ticable, on any claimant that received addi-
10 tional payments or amounts from the Cor-
11 poration pursuant to subsection (b)(4),
12 (d)(4), or (h)(5)(E), except for payments
13 or amounts necessary to initiate and con-
14 tinue operations essential to implementa-
15 tion of the receivership or any bridge fi-
16 nancial company, to recover on a cumu-
17 lative basis, the entire difference be-
18 tween—

19 (I) the aggregate value the claim-
20 ant received from the Corporation on
21 a claim pursuant to this title (includ-
22 ing pursuant to subsection (b)(4),
23 (d)(4), and (h)(5)(E)), as of the date
24 on which such value was received; and

1 (II) the value the claimant was
2 entitled to receive from the Corpora-
3 tion on such claim solely from the
4 proceeds of the liquidation of the cov-
5 ered financial company under this
6 title; and

7 (ii) if the amounts recovered on a cu-
8 mulative basis under clause (i) are insuffi-
9 cient to meet the requirements of subpara-
10 graph (B), after taking into account the
11 considerations set forth in paragraph (7),
12 impose assessments on those eligible finan-
13 cial companies and those financial compa-
14 nies with total consolidated assets equal to
15 or greater than \$50,000,000,000 that are
16 not eligible financial companies that the
17 Corporation determines to be in the high-
18 risk category in accordance with paragraph
19 (7); and

20 (iii) if the amounts recovered on a cu-
21 mulative basis under clauses (i) and (ii)
22 are insufficient, after taking into account
23 the considerations set forth in paragraph
24 (7), impose assessments on those eligible
25 financial companies and those financial

1 companies with total consolidated assets
2 equal to or greater than \$50,000,000,000
3 that are not eligible financial companies
4 that the Corporation determines not to be
5 in the high-risk category in accordance
6 with paragraph (7).

7 (D) MINIMUM ASSESSMENT THRESH-
8 OLD.—

9 (i) IN GENERAL.—The Corporation
10 shall not assess financial companies with
11 less than \$50,000,000,000, adjusted for in-
12 flation, of assets on a consolidated basis,
13 subject to any differentiation as permitted
14 in paragraph (8) and shall assess financial
15 companies with \$50,000,000,000, adjusted
16 for inflation, or more in assets in accord-
17 ance with paragraphs (7) and (8).

18 (ii) HEDGE FUNDS.—The Corporation
19 shall not assess financial companies that
20 manage hedge funds (as defined by the
21 Corporation for the purpose of this section,
22 in consultation with the Securities and Ex-
23 change Commission) with less than
24 \$10,000,000,000, adjusted for inflation, of
25 assets, under management on a consoli-

1 dated basis, subject to any differentiation
2 as permitted in paragraph (8) and shall
3 assess any financial companies that man-
4 age hedge funds with \$10,000,000,000 or
5 more of assets under management in ac-
6 cordance with paragraphs (7) and (8).

7 (E) MAXIMUM SIZE OF FUND VIA ASSESS-
8 MENTS.—

9 (i) IN GENERAL.—The Corporation
10 shall suspend assessments on financial
11 companies on the day after the date on
12 which the total of the assessments, exclud-
13 ing interest or other earnings from invest-
14 ments made pursuant to paragraph (2)(D),
15 equals \$150,000,000,000.

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

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

20 (II) shall be set aside if the Fund
21 falls below the minimum level estab-
22 lished in subparagraph (D).

23 (7) FACTORS.—The Corporation, in consulta-
24 tion with the Council shall establish a risk matrix to

1 be used in establishing assessments that takes into
2 account—

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

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

10 (C) any assessments imposed on a finan-
11 cial company or an affiliate of a financial com-
12 pany that—

13 (i) is an insured depository institu-
14 tion, assessed pursuant to section 7 or
15 13(c)(4)(G) of the Federal Deposit Insur-
16 ance Act;

17 (ii) is a member of the Securities In-
18 vestor Protection Corporation, assessed
19 pursuant to section 4 of the Securities In-
20 vestor Protection Act of 1970 (15 U.S.C.
21 78ddd);

22 (iii) is an insured credit union, as-
23 sessed pursuant to section 202(c)(1)(A)(i)
24 of the Federal Credit Union Act (12
25 U.S.C. 1782(c)(1)(A)(i)); or

1 (iv) is an insurance company, assessed
2 pursuant to applicable State law to cover
3 (or reimburse payments made to cover) the
4 costs of the rehabilitation, liquidation or
5 other State insolvency proceeding with re-
6 spect to 1 or more insurance companies;

7 (D) the risks presented by the financial
8 company to the financial system and the extent
9 to which the financial company has benefitted,
10 or likely would benefit, from the dissolution of
11 a financial company under this title, includ-
12 ing—

13 (i) the amount, different categories,
14 and concentrations of assets of the finan-
15 cial company and its affiliates, including
16 both on-balance sheet and off-balance sheet
17 assets;

18 (ii) the activities of the financial com-
19 pany and its affiliates;

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

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

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

4 (vi) the amount, maturity, volatility,
5 and stability of the company's financial ob-
6 ligations to, and relationship with, other fi-
7 nancial companies;

8 (vii) the amount, maturity, volatility,
9 and stability of the company's liabilities,
10 including the degree of reliance on short-
11 term funding, taking into consideration ex-
12 isting systems for measuring a company's
13 risk-based capital;

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

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

20 (x) the extent to which assets are sim-
21 ply managed and not owned by the finan-
22 cial company and the extent to which own-
23 ership of assets under management is dif-
24 fuse; and

1 (xi) the amount, different categories,
2 and concentrations of liabilities, both in-
3 sured and uninsured, contingent and non-
4 contingent, including both on-balance sheet
5 and off-balance sheet liabilities, of the fi-
6 nancial company and its affiliates; and

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

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

15 (8) REQUIREMENT FOR EQUITABLE TREAT-
16 MENT IN ASSESSMENTS.—In establishing the assess-
17 ment system for the Fund, the Corporation, by regu-
18 lation and in consultation with the Council, shall dif-
19 ferentiate among financial companies based on com-
20 plexity of operations or organization, interconnected-
21 ness, size, direct or indirect activities, and any other
22 factors the Corporation or the Council may deem ap-
23 propriate to ensure that the assessments charged eq-
24 uitably reflect the risk posed to the Fund by par-
25 ticular classes of financial companies.

1 (9) MINIMUM COMMENT PERIOD.—In order to
2 ensure sufficient opportunity for public and congres-
3 sional review and evaluation of any assessment sys-
4 tem, any proposed regulations regarding the imple-
5 mentation of the assessment system under this sub-
6 title shall provide an opportunity for public comment
7 during a period of not less than 60 days.

8 (o) BORROWING AUTHORITY.—

9 (1) BORROWING FROM TREASURY.—

10 (A) IN GENERAL.—Subject to paragraphs
11 (3), (4), and (5), the Corporation may borrow
12 from the Treasury, and the Secretary of the
13 Treasury is authorized to lend to the Corpora-
14 tion on such terms as may be fixed by the Cor-
15 poration and the Secretary, such funds as in
16 the judgment of the Board of Directors of the
17 Corporation are required, in addition to the
18 funds available in the Systemic Dissolution
19 Fund, to permit the orderly dissolution of 1 or
20 more covered systemically significant financial
21 companies, covered affiliates, or covered sub-
22 sidiaries under this title.

23 (B) RATE OF INTEREST.—The rate of in-
24 terest to be charged in connection with any loan
25 made pursuant to this subsection shall not be

1 less than an amount determined by the Sec-
2 retary of the Treasury, taking into consider-
3 ation current market yields on outstanding
4 marketable obligations of the United States of
5 comparable maturities.

6 (2) PUBLIC DEBT ISSUANCES.—For the pur-
7 poses described in paragraph (1), the Secretary of
8 the Treasury may use as a public-debt transaction
9 the proceeds of the sale of any securities hereafter
10 issued under chapter 31 of title 31, and the pur-
11 poses for which securities may be issued under chap-
12 ter 31 of title 31 are extended to include such loans.
13 All loans and repayments under this subsection shall
14 be treated as public-debt transactions of the United
15 States.

16 (3) BORROWING AUTHORITY WHEN FUND AS-
17 SETS ARE LESS THAN \$150,000,000,000.—

18 (A) Subject to paragraph (B), the bor-
19 rowing authority granted in paragraph (1) shall
20 be available to the Corporation where—

21 (i) the value of the Fund is less than
22 \$150,000,000,000;

23 (ii) the Corporation determines that
24 the immediate dissolution of a financial
25 company or financial companies requires

1 more funds than are available in the Fund;
2 and

3 (iii) the Corporation has provided a
4 specific plan for repayment under para-
5 graph (7)(A).

6 (B) The Corporation may borrow, and the
7 Secretary may lend, any amount of funds that,
8 when added to the amount available in the
9 Fund on the date the Corporation makes a re-
10 quest to borrow funds, would not exceed
11 \$150,000,000,000.

12 (C) For purposes of paragraph (1), the
13 Corporation's total debt may not exceed
14 \$150,000,000,000 (not including any funds bor-
15 rowed pursuant to subsection (s)).

16 (4) ADDITIONAL BORROWING AUTHORITY.—

17 (A) If at any time the Corporation antici-
18 pates that the dissolution of any financial com-
19 pany or financial companies will require funds
20 in excess of \$150,000,000,000—

21 (i) the Corporation shall submit to the
22 Secretary and the President a written re-
23 quest for additional borrowing authority
24 subject to the limitation in subparagraph
25 (5), which shall be accompanied by a cer-

1 tification indicating the anticipated amount
2 needed, the basis on which such amount
3 was determined, and any such information
4 as the Secretary may deem necessary; and

5 (ii) the President shall transmit a re-
6 quest to the House of Representatives and
7 the Senate requesting the additional bor-
8 rowing authority, which shall include the
9 certification referred to in clause (i) and
10 which includes a repayment schedule as
11 outlined in paragraph (7).

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

17 (5) LIMITATIONS ON ADDITIONAL BORROWING
18 AUTHORITY.—

19 (A) No request for borrowing authority is
20 permitted under paragraph (4) unless the
21 President, in consultation with the Council, cer-
22 tifies to the House of Representatives and the
23 Senate that the borrowing authority is nec-
24 essary to avoid or mitigate an imminent finan-
25 cial emergency.

1 (B) The amount of borrowing authority re-
2 requested under subparagraph (A)(i) may not ex-
3 ceed \$50,000,000,000.

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

6 (A) IN GENERAL.—The Corporation shall
7 take such measures as may be appropriate to
8 maximize the amount of funds from any dis-
9 solution that may be available for repayment
10 under subparagraph (B) consistent with sys-
11 temic concerns.

12 (B) REPAYMENT PRIORITY.—Amounts re-
13 alized from the dissolution of any financial com-
14 pany under this subtitle that are not otherwise
15 utilized by the Corporation to dissolve a finan-
16 cial company under subsection (n)(3)(A) shall
17 be paid—

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

21 (ii) second, to recapitalize the Fund,
22 subject to the requirements of section
23 1604(g), to such level as the Corporation
24 deems necessary, but not to exceed
25 \$150,000,000,000.

1 (7) REPAYMENT PLAN AND SCHEDULES RE-
2 QUIRED FOR ANY BORROWING.—

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

8 (i) provides a specific plan and sched-
9 ule for assessments under (n)(6) to achieve
10 the repayment of the outstanding amount
11 of any borrowing under such subsection;
12 and

13 (ii) demonstrates that income to the
14 Corporation from assessments under this
15 section will be sufficient to amortize the
16 outstanding balance within the period es-
17 tablished in the repayment schedule and
18 pay the interest accruing on such balance.

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

22 (i) consult with the Committee on Fi-
23 nancial Services of the House of Rep-
24 resentatives and the Committee on Bank-
25 ing, Housing, and Urban Affairs of the

1 Senate on the terms of any repayment
2 schedule agreement; and

3 (ii) submit a copy of each repayment
4 schedule agreement to the Committee on
5 Financial Services of the House of Rep-
6 resentatives and the Committee on Bank-
7 ing, Housing, and Urban Affairs of the
8 Senate before the end of the 30-day period
9 beginning on the date any amount is pro-
10 vided by the Secretary of the Treasury to
11 the Corporation under paragraph (1).

12 (p) INFORMATION GATHERING AND VERIFICATION;
13 PAYMENTS.—

14 (1) IN GENERAL.—The Corporation may re-
15 quire each financial company to make available such
16 information as the Corporation may require—

17 (A) for purposes of—

18 (i) determining the financial com-
19 pany's assessment under this section;

20 (ii) verifying the accuracy of informa-
21 tion; and

22 (iii) preparing for dissolution, includ-
23 ing a dissolution plan as required by this
24 section; and

1 (B) for such other purposes as may be ap-
2 propriate and necessary to promote the orderly
3 dissolution of the financial company.

4 (2) USE OF EXISTING REPORTS.—The Corpora-
5 tion shall, to the fullest extent possible, accept—

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

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

12 (C) externally audited financial statements.

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

17 (4) RULEMAKING.—The Corporation may pro-
18 mulgate such rules or regulations as are necessary
19 or appropriate to implement this subsection.

20 (5) PAYMENTS OF ASSESSMENTS REQUIRED.—

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

24 (B) FORM OF PAYMENT.—The payments
25 required under this section shall be made in

1 such manner and at such time or times as the
2 Corporation, in consultation with the Council,
3 shall prescribe by regulation.

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

10 (q) ASSESSMENT ACTIONS.—

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

16 (2) STATUTE OF LIMITATIONS.—Notwith-
17 standing any other provision in Federal law, or the
18 law of any State—

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

24 (B) any action by the Corporation to re-
25 cover from a financial company the underpaid

1 amount of any assessment shall be brought
2 within 3 years after the date the assessment
3 payment was due, subject to subparagraph (C);
4 and

5 (C) if a financial company has made a
6 false or fraudulent statement with intent to
7 evade any or all of its assessment, the Corpora-
8 tion shall have until 3 years after the date of
9 discovery of the false or fraudulent statement in
10 which to bring an action to recover the under-
11 paid amount.

12 (r) REQUIREMENT TO MAINTAIN SYSTEMIC DIS-
13 SOLUTION FUND AS SEPARATE FUND.—The Systemic
14 Dissolution Fund shall at all times be administered in a
15 manner that is separate and distinct from the Deposit In-
16 surance Fund, and the Corporation shall take such actions
17 as may be necessary to ensure that such distinction is
18 made with respect to internal processes and procedures
19 as well as with regard to any public information, discus-
20 sion or other communications involving either Fund.

21 (s) CONGRESSIONAL APPROVAL OF ADDITIONAL
22 BORROWING AUTHORITY.—

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

1 (o)(4)(A)(ii), a joint resolution specified in para-
2 graph (5) shall be introduced in the House by the
3 majority leader of the House and in the Senate by
4 the majority leader of the Senate. If either House is
5 not in session on the day on which such a request
6 is received, the joint resolution with respect to such
7 request shall be introduced in that House, as pro-
8 vided in the preceding sentence, on the first day
9 thereafter on which that House is in session.

10 (2) CONSIDERATION IN THE HOUSE OF REP-
11 RESENTATIVES.—

12 (A) REPORTING AND DISCHARGE.—Any
13 committee of the House of Representatives to
14 which a joint resolution introduced under para-
15 graph (1) is referred shall report such joint res-
16 olution to the House not later than 5 calendar
17 days after the applicable date of introduction of
18 the joint resolution. If a committee fails to re-
19 port such joint resolution within that period,
20 the committee shall be discharged from further
21 consideration of the joint resolution and the
22 joint resolution shall be referred to the appro-
23 priate calendar.

24 (B) PROCEEDING TO CONSIDERATION.—
25 After all committees authorized to consider a

1 joint resolution have reported such joint resolu-
2 tion to the House or have been discharged from
3 its consideration, it shall be in order, not later
4 than the sixth day after the applicable date of
5 introduction of the joint resolution, for the ma-
6 jority leader to move to proceed to consider the
7 joint resolution in the House. Such a motion
8 shall not be in order after the House has dis-
9 posed of a motion to proceed on the joint reso-
10 lution and shall not be in order if the House
11 has received a message from the Senate under
12 paragraph (4)(C). The previous question shall
13 be considered as ordered on the motion to its
14 adoption without intervening motion. A motion
15 to reconsider the vote by which the motion is
16 disposed of shall not be in order.

17 (C) CONSIDERATION.—The joint resolution
18 shall be considered in the House and shall be
19 considered as read. All points of order against
20 a joint resolution and against its consideration
21 are waived. The previous question shall be con-
22 sidered as ordered on the joint resolution to its
23 passage without intervening motion except two
24 hours of debate equally divided and controlled
25 by the proponent and an opponent. A motion to

1 reconsider the vote on passage of a joint resolu-
2 tion shall not be in order.

3 (3) CONSIDERATION IN THE SENATE.—

4 (A) PLACEMENT ON CALENDAR.—Upon in-
5 troduction in the Senate, the joint resolution
6 shall be placed immediately on the calendar.

7 (B) FLOOR CONSIDERATION.—

8 (i) IN GENERAL.—Notwithstanding
9 rule XXII of the Standing Rules of the
10 Senate, it is in order at any time during
11 the period beginning on the fourth day
12 after the applicable date of introduction in
13 the Senate and ending on the sixth day
14 after the applicable date of introduction in
15 the Senate (even though a previous motion
16 to the same effect has been disagreed to)
17 to move to proceed to the consideration of
18 the joint resolution, and all points of order
19 against the joint resolution (and against
20 consideration of the joint resolution) are
21 waived. The motion to proceed is not de-
22 batable. The motion is not subject to a mo-
23 tion to postpone. A motion to reconsider
24 the vote by which the motion is agreed to
25 or disagreed to shall not be in order. If a

1 motion to proceed to the consideration of
2 the resolution is agreed to, the joint resolu-
3 tion shall remain the unfinished business
4 until disposed of.

5 (ii) DEBATE.—Debate on the joint
6 resolution, and on all debatable motions
7 and appeals in connection therewith, shall
8 be limited to not more than 10 hours,
9 which shall be divided equally between the
10 majority and minority leaders or their des-
11 ignees. A motion further to limit debate is
12 in order and not debatable. An amendment
13 to, or a motion to postpone, or a motion to
14 proceed to the consideration of other busi-
15 ness, or a motion to recommit the joint
16 resolution is not in order.

17 (iii) VOTE ON PASSAGE.—The vote on
18 passage shall occur immediately following
19 the conclusion of the debate on a joint res-
20 olution, and a single quorum call at the
21 conclusion of the debate if requested in ac-
22 cordance with the rules of the Senate.

23 (iv) RULINGS OF THE CHAIR ON PRO-
24 CEDURE.—Appeals from the decisions of
25 the Chair relating to the application of the

1 rules of the Senate, as the case may be, to
2 the procedure relating to a joint resolution
3 shall be decided without debate.

4 (4) RULES RELATING TO SENATE AND HOUSE
5 OF REPRESENTATIVES.—

6 (A) COORDINATION WITH ACTION BY
7 OTHER HOUSE.—If, before the passage by one
8 House of a joint resolution of that House, that
9 House receives from the other House a joint
10 resolution, then the following procedures shall
11 apply:

12 (i) The joint resolution of the other
13 House shall not be referred to a com-
14 mittee.

15 (ii) With respect to the joint resolu-
16 tion of the House receiving the resolution,
17 the procedure in that House shall be the
18 same as if no such joint resolution had
19 been received from the other House; but
20 the vote on passage shall be on the joint
21 resolution of the other House.

22 (B) TREATMENT OF COMPANION MEAS-
23 URES.—If, following passage of a joint resolu-
24 tion in the Senate, the Senate then receives the
25 companion measure from the House of Rep-

1 representatives, the companion measure shall not
2 be debatable.

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

5 (i) If, in the Senate, the motion to
6 proceed to the consideration of the joint
7 resolution fails on adoption, the Secretary
8 of the Senate shall transmit a message to
9 that effect to the House of Representa-
10 tives.

11 (ii) If, in the Senate, the joint resolu-
12 tion fails on passage, the Secretary of the
13 Senate shall transmit a message to that ef-
14 fect to the House of Representatives.

15 (D) RULES OF HOUSE OF REPRESENTA-
16 TIVES AND SENATE.—This paragraph and the
17 preceding paragraphs are enacted by Con-
18 gress—

19 (i) as an exercise of the rulemaking
20 power of the Senate and House of Rep-
21 resentatives, respectively, and as such it is
22 deemed a part of the rules of each House,
23 respectively, but applicable only with re-
24 spect to the procedure to be followed in
25 that House in the case of a joint resolu-

1 tion, and it supersedes other rules only to
2 the extent that it is inconsistent with such
3 rules; and

4 (ii) with full recognition of the con-
5 stitutional right of either House to change
6 the rules (so far as relating to the proce-
7 dure of that House) at any time, in the
8 same manner, and to the same extent as in
9 the case of any other rule of that House.

10 (5) DEFINITION.—In this section, the term
11 “joint resolution” means only a joint resolution—

12 (A) which does not have a preamble;

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

17 (C) the sole matter after the resolving
18 clause of which is as follows: “That the Con-
19 gress approves the request for additional bor-
20 rowing authority transmitted to the Congress
21 on _____ by the President under section
22 1609(o)(4)(A)(ii) of the Financial Stability Im-
23 provement Act of 2009.”, the blank space being
24 filled with the appropriate date.

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

1 **SEC. 215. SYSTEMIC LIQUIDATION AUTHORITY.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811
3 et seq.) is amended by inserting after section 11A the fol-
4 lowing new section:

5 **“SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.**

6 “(a) SYSTEMIC DISSOLUTION AUTHORITY.—The
7 Corporation shall establish a Systemic Dissolution Author-
8 ity, which shall function as a subsidiary of the Corpora-
9 tion.

10 “(b) SYSTEMIC DISSOLUTION FUND.—Any fund es-
11 tablished for the purpose of facilitating the dissolution of
12 a financial company under title II of the Restoring Amer-
13 ican Financial Stability Act of 2010 shall be called the
14 Systemic Dissolution Fund, which shall be managed by
15 the Corporation, through the Systemic Dissolution Au-
16 thority.

17 “(c) MANAGEMENT OF FUND.—

18 “(1) SEPARATE MAINTENANCE.—The Systemic
19 Dissolution Fund shall be separately maintained and
20 not commingled with any other fund of the Corpora-
21 tion.

22 “(2) TREATMENT OF AND ACCOUNTING FOR AS-
23 SETS.—The assets and liabilities of the Systemic
24 Dissolution Fund—

25 “(A) shall be the assets and liabilities of
26 the Fund and not of the Corporation; and

1 “(B) shall not be consolidated with the as-
2 sets and liabilities of the Deposit Insurance
3 Fund or the Corporation for accounting, report-
4 ing, or any other purpose.

5 “(d) RIGHTS, POWERS, AND DUTIES.—

6 “(1) IN GENERAL.—The Corporation, in addi-
7 tion to any rights, powers, and duties under this Act
8 or any other law, shall, through the Systemic Dis-
9 solution Authority, have all rights, powers, and du-
10 ties necessary to implement and maintain the Sys-
11 temic Dissolution Fund in accordance with title II of
12 the Restoring American Financial Stability Act of
13 2010.

14 “(2) POWERS AS RECEIVER FOR COVERED FI-
15 NANCIAL COMPANY.—When acting as receiver with
16 respect to any covered financial company, as defined
17 in title II of the Restoring American Financial Sta-
18 bility Act of 2010, the Corporation, through the Sys-
19 temic Dissolution Authority, shall have all rights,
20 powers, and duties that the Corporation has as re-
21 ceiver under such subtitle.

22 “(3) SPECIFIC AND INCIDENTAL POWERS.—The
23 Corporation, through the Systemic Dissolution Au-
24 thority, or any duly authorized officer or agent of
25 the Authority, may exercise all powers specifically

1 granted by the provisions of this Act and title II of
2 the Restoring American Financial Stability Act of
3 2010 and such incidental powers as shall be nec-
4 essary to carry out the powers so granted and ac-
5 complish the purposes of title II of the Restoring
6 American Financial Stability Act of 2010.

7 “(e) STAFF AND RESOURCES.—

8 “(1) IN GENERAL.—The Corporation shall as-
9 sign such staff, and provide such administrative and
10 other support services to the Systemic Dissolution
11 Authority as is necessary to fulfill the statutory re-
12 sponsibilities of the Authority.

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

17 **SEC. 216. STUDY ON SECURED CREDITOR HAIRCUTS.**

18 (a) STUDY REQUIRED.—The Corporation shall con-
19 duct a study evaluating the importance of maximizing
20 United States taxpayer protections and promoting market
21 discipline with respect to the treatment of fully secured
22 creditors in the utilization of the Orderly Liquidation Au-
23 thority authorized by this Act. In carrying out such study,
24 the Corporation shall—

1 (1) not be prejudicial to current or past laws or
2 regulations with respect to secured creditor treat-
3 ment in a resolution process;

4 (2) study the similarities and differences be-
5 tween the resolution mechanisms authorized by the
6 United States Bankruptcy Code, the Federal De-
7 posit Insurance Corporation Improvement Act of
8 1991, and the Orderly Liquidation Authority author-
9 ized by this Act;

10 (3) determine how various secured creditors are
11 treated in these resolution mechanisms and examine
12 how a haircut (of various degrees) on secured credi-
13 tors could improve market discipline and protect tax-
14 payers;

15 (4) compare the benefits and dynamics of pru-
16 dent lending practices by depository institutions in
17 secured loans for consumers and small businesses to
18 the lending practices of secured creditors to large,
19 interconnected financial firms;

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

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

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

3 (b) REPORT.—Not later than the end of the 1-year
4 period beginning on the date of the enactment of this Act,
5 the Corporation shall issue a report to the Congress con-
6 taining all findings and conclusions made by the Corpora-
7 tion in carrying out the study required under subsection
8 (a).



HOUSE PROPOSED AMENDMENT TO TITLE VIII

Strike title VIII.



HOUSE PROPOSED AMENDMENT TO TITLE I

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

1 **TITLE I—FINANCIAL STABILITY**

2 **SEC. 101. SHORT TITLE; DEFINITIONS.**

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

5 (b) DEFINITIONS.—For purposes of this title, the fol-
6 lowing definitions shall apply:

7 (1) The term “Board” means the Board of
8 Governors of the Federal Reserve System.

9 (2) The term “Council” means the Financial
10 Services Oversight Council established under section
11 111.

12 (3) The term “Federal financial regulatory
13 agency” means any agency that has a voting mem-
14 ber of the Council as set forth in section 111(b)(1).

15 (4) The term “financial company” means a
16 company or other entity—

17 (A) that is—

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

1 States, the District of Columbia, Common-
2 wealth of Puerto Rico, Commonwealth of
3 Northern Mariana Islands, Guam, Amer-
4 ican Samoa, or the United States Virgin
5 Islands; or

6 (ii) a company incorporated in or or-
7 ganized in a country other than the United
8 States that has significant operations in
9 the United States (hereafter in this title
10 referred to as a “foreign financial parent”)
11 after through—

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

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

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

21 (C) that is not a Farm Credit System in-
22 stitution chartered under and subject to the
23 provisions of the Farm Credit Act of 1971, as
24 amended (12 U.S.C. 2001 et seq.).

1 (5) FINANCIAL HOLDING COMPANY SUBJECT TO
2 STRICTER STANDARDS.—The term “financial holding
3 company subject to stricter standards” means—

4 (A) a financial company that has been sub-
5 jected to stricter prudential standards under
6 subtitle B; or

7 (B) in the case of a financial company de-
8 scribed in subparagraph (A) that is required to
9 establish an intermediate holding company, the
10 intermediate holding company through which
11 the financial company is required to conduct its
12 financial activities.

13 (6) The term “primary financial regulatory
14 agency” means the following:

15 (A) The Comptroller of the Currency, with
16 respect to any national bank, any Federal
17 branch or Federal agency of a foreign bank,
18 and, after the date on which the functions of
19 the Office of Thrift Supervision and the Direc-
20 tor of the Office of Thrift Supervision are
21 transferred under title III, a Federal savings
22 association.

23 (B) The Board, with respect to—
24 (i) any State member bank;

1 (ii) any bank holding company and
2 any subsidiary of such company (as such
3 terms are defined in the Bank Holding
4 Company Act), other than a subsidiary
5 that is described in any other subpara-
6 graph of this paragraph to the extent that
7 the subsidiary is engaged in an activity de-
8 scribed in such subparagraph;

9 (iii) any financial holding company
10 subject to stricter standards and any sub-
11 sidiary (as such term is defined in the
12 Bank Holding Company Act) of such com-
13 pany, other than a subsidiary that is de-
14 scribed in any other subparagraph of this
15 paragraph to the extent that the subsidiary
16 is engaged in an activity described in such
17 subparagraph;

18 (iv) after the date on which the func-
19 tions of the Office of Thrift Supervision
20 are transferred under title III, any savings
21 and loan holding company (as defined in
22 section 10(a)(1)(D) of the Home Owners'
23 Loan Act) and any subsidiary (as such
24 term is defined in the Bank Holding Com-
25 pany Act of 1956) of such company, other

1 than a subsidiary that is described in any
2 other subparagraph of this paragraph, to
3 the extent that the subsidiary is engaged
4 in an activity described in such subpara-
5 graph;

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

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

18 (C) The Federal Deposit Insurance Cor-
19 poration, with respect to any State nonmember
20 bank, any insured State branch of a foreign
21 bank (as such terms are defined in section 3 of
22 the Federal Deposit Insurance Act), and, after
23 the date on which the functions of the Office of
24 Thrift Supervision are transferred under title
25 III, any State savings association.

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

5 (E) The Securities and Exchange Commis-
6 sion, with respect to—

7 (i) any broker or dealer registered
8 with the Securities and Exchange Commis-
9 sion under the Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.);

11 (ii) any investment company reg-
12 istered with the Securities and Exchange
13 Commission under the Investment Com-
14 pany Act of 1940 (15 U.S.C. 80a–1 et
15 seq.);

16 (iii) any investment adviser registered
17 with the Securities and Exchange Commis-
18 sion under the Investment Advisers Act of
19 1940 (15 U.S.C. 80b–1 et seq.) with re-
20 spect to the investment advisory activities
21 of such company and activities incidental
22 to such advisory activities;

23 (iv) any clearing agency (as defined in
24 section 3(a)(23) of the Securities Ex-
25 change Act of 1934);

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

6 (vi) any exchange registered as a na-
7 tional securities exchange with the Securi-
8 ties and Exchange Commission under the
9 Securities Exchange Act of 1934 (15
10 U.S.C. 78a et seq.);

11 (vii) any credit rating agency reg-
12 istered with the Securities and Exchange
13 Commission under the Securities Exchange
14 Act of 1934 (15 U.S.C. 78a et seq.);

15 (viii) any securities information proc-
16 essor registered with the Securities and
17 Exchange Commission under the Securities
18 Exchange Act of 1934 (15 U.S.C. 78a et
19 seq.); and

20 (ix) any transfer agent registered with
21 the Securities and Exchange Commission
22 under the Securities Exchange Act of 1934
23 (15 U.S.C. 78a et seq.).

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

1 (i) any futures commission merchant,
2 any commodity trading adviser, any retail
3 foreign exchange dealer, and any com-
4modity pool operator registered with the
5 Commodity Futures Trading Commission
6 under the Commodity Exchange Act (7
7 U.S.C. 1 et seq.) with respect to the com-
8modities activities of such entity and ac-
9tivities incidental to such commodities ac-
10tivities; and

11 (ii) any derivatives clearing organiza-
12tion, designated contract market, or swap
13execution facility (as defined in the Com-
14modity Exchange Act).

15 (G) The Federal Housing Finance Agency
16with respect to the Federal National Mortgage
17Association, the Federal Home Loan Mortgage
18Corporation, and the Federal home loan banks.

19 (H) The State insurance authority of the
20State in which an insurance company is domi-
21ciled, with respect to the insurance activities
22and activities incidental to such insurance ac-
23tivities of an insurance company that is subject
24to supervision by the State insurance authority
25under State insurance law.

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

7 (7) TERMS DEFINED IN OTHER LAWS.—

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

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

17 **Subtitle A—The Financial Services**
18 **Oversight Council**

19 **SEC. 111. FINANCIAL SERVICES OVERSIGHT COUNCIL ES-**
20 **TABLISHED.**

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

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

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

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

5 (B) The Chairman of the Board of Gov-
6 ernors of the Federal Reserve System.

7 (C) The Comptroller of the Currency.

8 (D) The Director of the Office of Thrift
9 Supervision, until the functions of the Director
10 of the Office of Thrift Supervision are trans-
11 ferred pursuant to title III.

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

14 (F) The Chairman of the Commodity Fu-
15 tures Trading Commission.

16 (G) The Chairperson of the Federal De-
17 posit Insurance Corporation.

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

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

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

24 (2) NONVOTING MEMBERS.—Nonvoting mem-
25 bers, who shall serve in an advisory capacity and

1 shall not be excluded from any of the Council's pro-
2 ceedings, meetings, discussions, and deliberations:

3 (A) The Director of the Federal Insurance
4 Office.

5 (B) A State insurance commissioner, to be
6 designated by a selection process determined by
7 the State insurance commissioners, provided
8 that the term for which a State insurance com-
9 missioner may serve shall last no more than the
10 2-year period beginning on the date that the
11 commissioner is selected.

12 (C) A State banking supervisor, to be des-
13 ignated by a selection process determined by
14 the State bank supervisors, provided that the
15 term for which a State banking supervisor may
16 serve shall last no more than the 2-year period
17 beginning on the date that the supervisor is se-
18 lected.

19 (D) A State securities commissioner (or an
20 officer performing like functions), to be des-
21 ignated by a selection process determined by
22 such State securities commissioners, provided
23 that the term for which a State securities com-
24 missioner may serve shall last no more than the

1 2-year period beginning on the date that the
2 commissioner is selected.

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

5 (1) To advise the Congress on financial domes-
6 tic and international regulatory developments, in-
7 cluding insurance and accounting developments, and
8 make recommendations that will enhance the integ-
9 rity, efficiency, competitiveness, and stability of the
10 United States financial markets.

11 (2) To monitor the financial services market-
12 place to identify potential threats to the stability of
13 the United States financial system.

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

17 (4) To develop strategies (and conduct exercises
18 in furtherance of those strategies) to prepare for po-
19 tential threats identified under paragraphs (2) and
20 (3). In doing so, the Council shall collaborate with
21 participants in the financial sector, financial sector
22 coordinating councils, and any other parties the
23 Council determines to be appropriate.

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

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

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

7 (7) To monitor international regulatory develop-
8 ments, including both insurance and accounting de-
9 velopments, and to identify those developments that
10 may conflict with the policies of the United States
11 or place United States financial services firms or
12 United States financial markets at a competitive dis-
13 advantage.

14 (8) To facilitate information sharing and co-
15 ordination among the members of the Council re-
16 garding financial services policy development,
17 rulemakings, examinations, reporting requirements,
18 and enforcement actions.

19 (9) To provide a forum for discussion and anal-
20 ysis of emerging market developments and financial
21 regulatory issues among its members.

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

1 (11) To review and submit comments to the Se-
2 curities and Exchange Commission and any stand-
3 ards setting body with respect to an existing or pro-
4 posed accounting principle, standard, or procedure.

5 **SEC. 112. RESOLUTION OF DISPUTES AMONG FEDERAL FI-**
6 **NANCIAL REGULATORY AGENCIES.**

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

10 (1) a Federal financial regulatory agency has a
11 dispute with another Federal financial regulatory
12 agency about the agencies' respective jurisdiction
13 over a particular financial company or financial ac-
14 tivity or product (excluding matters for which a dis-
15 pute mechanism specifically has been provided under
16 title VII or title X);

17 (2) the disputing agencies cannot, after a dem-
18 onstrated good faith effort, resolve the dispute
19 among themselves; and

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

22 (A) provides all other disputants prior no-
23 tice of its intent to request dispute resolution
24 by the Council; and

1 (B) requests in writing, no earlier than 14
2 days after providing the notice described in
3 paragraph (A), that the Council resolve the dis-
4 pute.

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

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

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

11 (3) by agreeing with 1 of the disputants regard-
12 ing the entirety of the matter or by determining a
13 compromise position.

14 (c) FORM AND BINDING EFFECT.—A Council deci-
15 sion under this section shall be in writing and include an
16 explanation and shall be binding on all Federal financial
17 regulatory agencies that are parties to the dispute.

18 **SEC. 113. TECHNICAL AND PROFESSIONAL ADVISORY COM-**
19 **MITTEES.**

20 The Council is authorized to appoint—

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

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

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

4 **SEC. 114. FINANCIAL SERVICES OVERSIGHT COUNCIL**
5 **MEETINGS AND COUNCIL GOVERNANCE.**

6 (a) MEETINGS.—The Council shall meet as fre-
7 quently as the Chairman deems necessary, but not less
8 than quarterly.

9 (b) VOTING.—Unless otherwise provided, the Council
10 shall make all decisions the Council is required or author-
11 ized to make by a majority of the total voting membership
12 of the Council under section 111(b)(1).

13 **SEC. 115. COUNCIL STAFF AND FUNDING.**

14 (a) VOTING MEMBERS OF THE COUNCIL.—The Sec-
15 retary of the Treasury shall and all other voting members
16 of the Council may, with the approval of the Council—

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

22 (2) provide such other services and facilities
23 necessary for the performance of the Council's func-
24 tions and fulfillment of the duties and mission of the
25 Council.

1 (b) OTHER DEPARTMENTS AND AGENCIES.—In addi-
2 tion to the assistance prescribed in subsection (a), depart-
3 ments and agencies of the United States may, with the
4 approval of the Council—

5 (1) detail department or agency staff on a tem-
6 porary basis to provide additional support to the
7 Council (and any special advisory, technical, or pro-
8 fessional committees appointed by the Council); and
9 (2) provide such services, and facilities as the
10 other departments or agencies may determine advis-
11 able.

12 (c) STAFF STATUS; COUNCIL FUNDING.—

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

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

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

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

1 **SEC. 116. REPORTS TO THE CONGRESS.**

2 (a) IN GENERAL.—Semiannually the Council shall
3 submit a report to the Committee on Ways and Means,
4 the Committee on Agriculture, and the Committee on Fi-
5 nancial Services of the House of Representatives and the
6 Committee on Finance, the Committee on Agriculture,
7 and the Committee on Banking, Housing, and Urban Af-
8 fairs of the Senate, and the Comptroller General of the
9 United States that—

10 (1) describes significant financial and regu-
11 latory developments, including insurance and ac-
12 counting regulations and standards, and assesses the
13 impact of those developments on the stability of the
14 financial system;

15 (2) recommends actions that will improve finan-
16 cial stability;

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

21 (4) describes strategies developed by the Coun-
22 cil to respond to potential threats to the stability of
23 the United States financial system and the outcome
24 of exercises conducted in furtherance of those strate-
25 gies;

1 (5) describes the nature and scope of any com-
2 pany or activities identified under subtitle B and
3 steps taken to address them; and

4 (6) describes any dispute resolutions under-
5 taken under section 112 and the result of such reso-
6 lutions.

7 (b) EVALUATION OF ANNUAL REPORT BY GAO.—

8 Not later than 120 days after receiving the report required
9 by subsection (a), the Comptroller General of the United
10 States shall submit an evaluation of such report to the
11 Committee on Ways and Means, the Committee on Agri-
12 culture, and the Committee on Financial Services of the
13 House of Representatives and the Committee on Finance,
14 the Committee on Agriculture, and the Committee on
15 Banking, Housing, and Urban Affairs of the Senate.

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

19 (1) if such member believes that the Council,
20 the Government, and the private sector are taking
21 all reasonable steps to ensure financial stability and
22 to prevent systemic risk that would negatively affect
23 the economy, submit a signed statement to the Com-
24 mittee on Ways and Means, the Committee on Agri-
25 culture, and the Committee on Financial Services of

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

5 (2) if such member does not believe that all rea-
6 sonable steps described under paragraph (1) are
7 being taken, submit a signed statement to the Com-
8 mittee on Ways and Means, the Committee on Agri-
9 culture, and the Committee on Financial Services of
10 the House of Representatives and the Committee on
11 Finance, the Committee on Agriculture, and the
12 Committee on Banking, Housing, and Urban Affairs
13 of the Senate stating what actions such member be-
14 lieves need to be taken in order to ensure that all
15 reasonable steps described under paragraph (1) are
16 taken.

17 (d) TESTIMONY BY THE CHAIRMAN.—The Chairman
18 of the Council shall appear before the Committee on Fi-
19 nancial Services of the House of Representatives and the
20 Committee on Banking, Housing, and Urban Affairs of
21 the Senate at a semi-annual hearing, after the report is
22 submitted under subsection (a)—

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

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

3 (e) STUDY OF EFFECTS CONSUMER FINANCIAL PRO-
4 TECTION AGENCY REGULATIONS AND STANDARDS.—

5 (1) STUDY REQUIRED.—The Council shall con-
6 duct a study of the effects that regulations and
7 standards of the Consumer Financial Protection
8 Agency will have on all covered persons (as such
9 term is defined in section 1002(6)), including non-
10 depository institution covered persons. The Director
11 of the Consumer Financial Protection Agency shall
12 take the findings of the study into account when
13 issuing regulations.

14 (2) VALUE OF NONBANK PRODUCTS.—The
15 study shall include an evaluation and assessment of
16 the appropriateness of using “APR” as a true meas-
17 ure of the value of all nonbank products.

18 (3) SUBMISSION.—Not later than 240 days
19 after the date of the enactment of this Act, the Di-
20 rector of the Consumer Financial Protection Agency
21 shall submit the study to Congress and include any
22 recommendations the Director may have for changes
23 in law and regulations to improve consumer protec-
24 tions and maintain access to credit.

1 **SEC. 117. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

2 (a) The Federal Advisory Committee Act shall not
3 apply to the Financial Services Oversight Council, or any
4 special advisory, technical, or professional committees ap-
5 pointed by the Council (except that, if an advisory, tech-
6 nical, or professional committee has one or more members
7 who are not employees of or affiliated with the United
8 States government, the Council shall publish a list of the
9 names of the members of such committee).

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

12 **SEC. 118. OVERSIGHT BY GAO.**

13 (a) **AUTHORITY TO AUDIT.**—The Comptroller Gen-
14 eral of the United States may audit the activities and fi-
15 nancial transactions of—

16 (1) the Council; and

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

21 (b) **ACCESS TO INFORMATION.**—

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

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

3 (B) any records or other information under
4 the control of a person or entity acting on be-
5 half of or under the authority of the Council, to
6 the extent such records or other information is
7 relevant to an audit under subsection (a); and

8 (C) the officers, directors, employees, fi-
9 nancial advisors, staff, working groups, and
10 agents and representatives of the Council (as
11 related to the agent's or representative's activi-
12 ties on behalf of the Council) at such reasonable
13 times as the Comptroller General may request.

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

16 (A) information provided to the Council by
17 its voting and nonvoting members under section
18 122; and

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

21 (3) COPIES.—Comptroller General may make
22 and retain copies of such books, accounts, and other
23 records access to which is granted under this provi-
24 sion as the Comptroller General considers appro-
25 priate.

1 (c) PERIODIC EVALUATIONS.—The Comptroller Gen-
2 eral of the United States shall periodically evaluate the
3 processes and activities of the Council and the extent to
4 which the Council is fulfilling its duties under this title.
5 The Comptroller General shall submit to the Committee
6 on Financial Services of the House of Representatives and
7 the Committee on Banking, Housing, and Urban Affairs
8 of the Senate a report on the results of each such evalua-
9 tion.

10 **Subtitle B—Prudential Regulation**
11 **of Companies and Activities for**
12 **Financial Stability Purposes**

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

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

18 **SEC. 122. COUNCIL AND BOARD AUTHORITY TO OBTAIN IN-**
19 **FORMATION.**

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

1 (1) to monitor the financial services market-
2 place to identify potential threats to the stability of
3 the United States financial system;

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

7 (3) to otherwise carry out any of the provisions
8 of this title, including to ascertain a primary finan-
9 cial regulatory agency's implementation of rec-
10 ommended prudential standards under this subtitle.

11 (b) SUBMISSION BY COUNCIL MEMBERS.—Notwith-
12 standing any provision of law, any voting or nonvoting
13 member of the Council is authorized to provide informa-
14 tion to the Council, and the members of the Council shall
15 maintain the confidentiality of such information.

16 (c) FINANCIAL COMPANY DATA COLLECTION.—

17 (1) IN GENERAL.—The Council or the Board
18 may require the submission of periodic and other re-
19 ports from any financial company solely for the pur-
20 pose of assessing the extent to which a financial ac-
21 tivity or financial market in which the financial com-
22 pany participates, or the company itself, poses a
23 threat to financial stability.

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

1 companies that are regulated by the primary finan-
2 cial regulatory agencies, the Council or the Board
3 shall coordinate with such agencies and shall, when-
4 ever possible, rely on information already being col-
5 lected by such agencies.

6 (3) MITIGATION REQUIREMENTS IN CASE OF
7 FOREIGN FINANCIAL PARENTS.—Before requiring
8 the submission of reports from a company that is a
9 foreign financial parent, the Council or the Board
10 shall, to the extent appropriate, coordinate with any
11 appropriate foreign regulator of such company and
12 any appropriate multilateral organization and, when-
13 ever possible, rely on information already being col-
14 lected by such foreign regulator or multilateral orga-
15 nizational with English translation.

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

21 (e) ADDITIONAL PROVISIONS.—

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

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

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

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

9 (D) designate the format in which re-
10 quested data and information must be sub-
11 mitted to the Council, including any electronic,
12 digital, or other format that facilitates the use
13 of such data by the Council in its analysis.

14 (2) APPLICABLE PRIVILEGES NOT WAIVED.—A
15 Federal financial regulator, State financial regu-
16 lator, United States financial company, foreign fi-
17 nancial company operating in the United States, fi-
18 nancial market utility, or other person shall not be
19 compelled to waive and shall not be deemed to have
20 waived any privilege otherwise applicable to any data
21 or information by transferring the data or informa-
22 tion to, or permitting that data or information to be
23 used by—

24 (A) the Council;

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

3 (C) any other agency of the Federal Gov-
4 ernment (as defined in section 6 of title 18,
5 United States Code).

6 (3) DISCLOSURE EXEMPTION.—Any informa-
7 tion obtained by the Council under this section shall
8 be exempt from the disclosure requirements under
9 section 552 of title 5, United States Code.

10 (4) CONSULTATION WITH FOREIGN GOVERN-
11 MENTS.—Under the supervision of the President,
12 and in a manner consistent with section 207 of the
13 Foreign Service Act of 1980 (22 U.S.C. 3927), the
14 Chairman of the Council, in consultation with the
15 other members of the Council, shall regularly consult
16 with the financial regulatory entities and other ap-
17 propriate organizations of foreign governments or
18 international organizations on matters relating to
19 systemic risk to the international financial system.

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

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

4 **SEC. 123. COUNCIL PRUDENTIAL REGULATION REC-**
5 **COMMENDATIONS TO FEDERAL FINANCIAL**
6 **REGULATORY AGENCIES; AGENCY AUTHOR-**
7 **ITY.**

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

12 (b) AGENCY AUTHORITY TO IMPLEMENT STAND-
13 ARDS.—

14 (1) A Federal financial regulatory agency spe-
15 cifically may, in response to a Council recommenda-
16 tion under this section or otherwise, impose, require
17 reports regarding, examine for compliance with, and
18 enforce stricter prudential standards and safeguards
19 for the firms it regulates to mitigate systemic risk.
20 This authority is in addition to and does not limit
21 any other authority of the Federal financial regu-
22 latory agencies. Compliance by an entity with ac-
23 tions taken by a Federal financial regulatory agency
24 under this section shall be enforceable in accordance
25 with the statutes governing the respective Federal fi-

1 nancial regulatory agency's jurisdiction over the en-
2 tity as if the agency action were taken under those
3 statutes.

4 (2) APPLYING STANDARDS TO FOREIGN FINAN-
5 CIAL PARENTS.—In applying standards under para-
6 graph (1) to any foreign financial parent, or to any
7 branch of, subsidiary of, or other operating entity
8 related to such foreign financial parent that operates
9 within the United States, the Federal financial regu-
10 latory agency shall—

11 (A) give due regard to the principles of na-
12 tional treatment and equality of competitive op-
13 portunity; and

14 (B) take into account the extent to which
15 the foreign financial parent is subject to com-
16 parable standards on a consolidated basis in the
17 home country of such foreign financial parent
18 that are administered by a comparable foreign
19 supervisory authority.

20 (c) AGENCY NOTICE TO COUNCIL.—A Federal finan-
21 cial regulatory agency shall, within 60 days of receiving
22 a Council recommendation under this section, notify the
23 Council in writing regarding—

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

1 ommendation, additional actions contemplated, and
2 timetables therefore; or

3 (2) the reason the Federal financial regulatory
4 agency has failed to respond to the Council's re-
5 quest.

6 **SEC. 124. SUBJECTING FINANCIAL COMPANIES TO STRICT-**
7 **ER PRUDENTIAL STANDARDS FOR FINANCIAL**
8 **STABILITY PURPOSES.**

9 (a) IN GENERAL.—The Council shall, in consultation
10 with the Board and any other primary financial regulatory
11 agency that regulates the financial company or a sub-
12 sidiary of such company, and, in the case of a financial
13 holding company subject to stricter standards that is an
14 insurance company, the Federal Insurance Office, subject
15 a financial company to stricter prudential standards under
16 this subtitle if the Council determines that—

17 (1) material financial distress at the company
18 could pose a threat to financial stability or the econ-
19 omy; or

20 (2) the nature, scope, size, scale, concentration,
21 and interconnectedness, or mix of the company's ac-
22 tivities could pose a threat to financial stability or
23 the economy.

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

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

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

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

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

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

19 (6) The extent to which assets are simply man-
20 aged and not owned by the financial company and
21 the extent to which ownership of assets under man-
22 agement is diffuse.

23 (7) The nature, scope, and mix of the com-
24 pany's activities.

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

9 (9) The amount and nature of the company's fi-
10 nancial assets.

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

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

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

22 (d) PERIODIC REVIEW AND RESCISSION OF FIND-
23 INGS.—

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

1 taining an assessment of whether each company sub-
2 jected to stricter prudential standards should con-
3 tinue to be subject to such standards.

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

6 (A) review the assessment submitted pur-
7 suant to paragraph (1) and any information or
8 recommendation submitted by members of the
9 Council regarding whether a financial holding
10 company subject to stricter standards continues
11 to merit stricter prudential standards; and

12 (B) rescind the action subjecting a com-
13 pany to stricter prudential standards if the
14 Council determines that the company no longer
15 meets the conditions for being subjected to
16 stricter prudential standards in subsections (a)
17 and (b).

18 (e) APPEAL.—

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

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

6 (f) EFFECT OF COUNCIL DECISION.—

7 (1) APPLICATION OF FEDERAL LAWS.—

8 (A) APPLICATION OF BANK HOLDING COM-
9 PANY ACT AND FEDERAL DEPOSIT INSURANCE
10 ACT.—A financial company subject to stricter
11 standards that does not own a bank (as defined
12 in section 2 of the Bank Holding Company Act
13 of 1956) and that is not a foreign bank or com-
14 pany that is treated as a bank holding company
15 under section 8 of the International Banking
16 Act of 1978 shall be subject to section 4, sub-
17 sections (b), (c), (d), (e), (f), and (g) of section
18 5, and section 8 of the Bank Holding Company
19 Act of 1956, and section 8 of the Federal De-
20 posit Insurance Act in the same manner and to
21 the same extent as if such financial holding
22 company subject to stricter standards were a
23 bank holding company that has elected to be a
24 financial holding company (as such terms are
25 defined in the Bank Holding Company Act of

1 1956), its subsidiaries were subsidiaries of a
2 bank holding company, and the Board was its
3 appropriate Federal banking agency (as such
4 term is defined under the Federal Deposit In-
5 surance Act).

6 (B) BOARD AUTHORITY.—For purposes of
7 administering and enforcing the provisions of
8 this title, the Board may take any action with
9 respect to a financial holding company subject
10 to stricter standards described in subparagraph
11 (A) or its subsidiaries under the authorities de-
12 scribed in subparagraph (A) as if such financial
13 holding company subject to stricter standards
14 were a bank holding company that has elected
15 to be a financial holding company (as such
16 terms are defined in the Bank Holding Com-
17 pany Act of 1956), its subsidiaries were subsidi-
18 aries of a bank holding company, and the
19 Board was its appropriate Federal banking
20 agency (as such term is defined under the Fed-
21 eral Deposit Insurance Act).

22 (2) APPLICATION OF ACTIVITY RESTRICTIONS
23 AND INTERMEDIATE HOLDING COMPANY REQUIRE-
24 MENTS.—

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

3 (i) a financial holding company sub-
4 ject to stricter standards that conducts ac-
5 tivities that do not comply with section 4
6 of the Bank Holding Company Act shall be
7 required to establish or designate an inter-
8 mediate holding company through which it
9 conducts activities of the company that are
10 determined to be financial in nature or in-
11 cidental thereto under section 4(k) of such
12 Act; and

13 (ii) such intermediate holding com-
14 pany shall be the financial holding com-
15 pany subject to stricter standards for pur-
16 poses of this title.

17 (B) EXCEPTIONS FROM INTERMEDIATE
18 HOLDING COMPANY REQUIREMENTS.—

19 (i) GENERAL REQUIREMENT FOR
20 BOARD TO CONSIDER EXCEPTIONS.—Be-
21 fore such time as a financial holding com-
22 pany subject to stricter standards is re-
23 quired to establish or designate an inter-
24 mediate holding company, and in consulta-
25 tion with the financial holding company

1 subject to stricter standards and any ap-
2 propriate Federal or State financial regu-
3 lators (and, in the case of a financial hold-
4 ing company subject to stricter standards
5 that is an insurance company, the Federal
6 Insurance Office)—

7 (I) the Board shall consider
8 whether to grant any of the exemp-
9 tions described under subparagraph
10 (C), in accordance with that provision;
11 and

12 (II) the Board, at the request of
13 a financial holding company subject to
14 stricter standards that is predomi-
15 nantly engaged in activities that are
16 determined to be financial in nature
17 or incidental thereto under section
18 4(k) of the Bank Holding Company
19 Act, shall consider whether to exempt
20 the financial holding company subject
21 to stricter standards from the require-
22 ment to establish an intermediate
23 holding company, taking into consid-
24 eration paragraph (2)(L), and the ex-
25 tent to which the exemption would: fa-

1 cilitate the extension of credit to indi-
2 viduals, households and businesses;
3 improve efficiency or customer service
4 or result in other public benefits; po-
5 tentially threaten the safety and
6 soundness of the financial holding
7 company or any of its subsidiaries; po-
8 tentially increase systemic risk or
9 threaten the stability of the overall fi-
10 nancial system; potentially result in
11 unfair competition; and potentially
12 have anticompetitive effects that
13 would not be outweighed by public
14 benefits.

15 (ii) BOARD DETERMINATION NOT TO
16 EXEMPT.—

17 (I) IN GENERAL.—If the Board
18 determines not to exempt the financial
19 holding company subject to stricter
20 standards from the requirement to es-
21 tablish an intermediate holding com-
22 pany, the financial holding company
23 subject to stricter standards shall es-
24 tablish such intermediate holding

1 company within 90 days after the
2 Board's determination.

3 (II) EXTENSION OF PERIOD.—

4 The Board may extend the time by
5 which the financial holding company
6 subject to stricter standards is re-
7 quired to establish an intermediate
8 holding company for an additional
9 reasonable period of time, not to ex-
10 ceed 180 days.

11 (iii) BOARD DETERMINATION TO EX-
12 EMPT.—

13 (I) IN GENERAL.—If the Board
14 grants the requested exemption from
15 the requirement to establish an inter-
16 mediate holding company, the finan-
17 cial holding company subject to strict-
18 er standards shall at all times remain
19 predominantly engaged in activities
20 that are determined to be financial in
21 nature or incidental thereto under sec-
22 tion 4(k) of the Bank Holding Com-
23 pany Act of 1956, and shall be the fi-
24 nancial holding company subject to

1 stricter standards for purposes of this
2 title.

3 (II) SUBSEQUENT LOSS OF EX-
4 EMPTION.—Upon a determination by
5 the Board, in consultation with any
6 relevant Federal or State regulators
7 of the financial holding company sub-
8 ject to stricter standards, and, in the
9 case of a financial holding company
10 subject to stricter standards that is an
11 insurance company, the Federal In-
12 surance Office, that the financial
13 holding company subject to stricter
14 standards fails to comply with this
15 subsection, the financial holding com-
16 pany subject to stricter standards
17 shall lose the exemption from the in-
18 termediate holding company require-
19 ment and shall establish an inter-
20 mediate holding company within the
21 time periods described in clause
22 (ii)(I).

23 (C) RULES AND EXEMPTIONS.—In addi-
24 tion to any other authority of the Board, the
25 Board shall prescribe rules and regulations or

1 issue orders providing for the establishment and
2 registration of intermediate holding companies
3 and shall provide exemptions from the require-
4 ments of this Act (including an order in re-
5 sponse to a request from an affected company),
6 including, but not limited to, exemptions—

7 (i) with respect to the requirement to
8 conduct such activities which are financial
9 in nature, as determined under section
10 4(k) of the Bank Holding Company Act of
11 1956, other than financial activities con-
12 ducted for such company or any affiliate,
13 including any financial activity engaged in
14 for both the company or an affiliate and a
15 nonaffiliate as permitted under section
16 4(f)(2)(D) of the Bank Holding Company
17 Act of 1956 and financial activities involv-
18 ing the provision of credit for the purchase
19 or lease of products or services from an af-
20 filiate or for the purchase or lease of prod-
21 ucts produced by an affiliate of such inter-
22 mediate holding company that is not a sub-
23 sidiary of such intermediate holding com-
24 pany, through such intermediate holding

1 company, if the Board makes a finding
2 that such exemption—

3 (I)(aa) would facilitate the exten-
4 sion of credit to individuals, house-
5 holds, and businesses; or

6 (bb) would allow for greater effi-
7 ciency, improved customer service, or
8 other public benefits in the conduct of
9 financial activities by affected compa-
10 nies;

11 (II) would not threaten the safety
12 and soundness of the intermediate
13 holding company, or of any insured
14 depository institution or other sub-
15 sidiary of the intermediate holding
16 company;

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

20 (IV) would not, as applied to the
21 activities that are the subject of the
22 rule, order or request, result in sub-
23 stantially lessening competition, or to
24 tend to create a monopoly, or which in
25 any other manner would be in re-

1 strait of trade, unless the Board
2 finds that the anticompetitive effects
3 are outweighed in the public interest
4 by the probable effect of the exemp-
5 tion in meeting the convenience and
6 needs of the community to be served;
7 and

8 (V) would meet the financial and
9 managerial standards for financial
10 holding companies described in sub-
11 paragraphs (A) and (B) of section
12 4(j)(4) of the Bank Holding Company
13 Act of 1956; and

14 (ii) from the affiliate transaction re-
15 quirements of paragraph (F), including but
16 not limited to exemptions that would facili-
17 tate extensions of credit to unaffiliated
18 persons for the personal, household, or
19 business purposes of such unaffiliated per-
20 sons, unless the Board makes a finding
21 that such exemption—

22 (I) is not consistent with the pur-
23 poses of section 23A and section 23B
24 of the Federal Reserve Act;

1 (II) would threaten the safety
2 and soundness of the intermediate
3 holding company, or any insured de-
4 pository institution or other subsidiary
5 of the intermediate holding company;

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

9 (IV) would not, as applied to the
10 activities that are the subject of the
11 rule, order or request result in sub-
12 stantially lessening competition, or to
13 tend to create a monopoly, or which in
14 any other manner would be in re-
15 straint of trade, unless the Board
16 finds that the anticompetitive effects
17 are outweighed in the public interest
18 by the probable effect of the exemp-
19 tion in meeting the convenience and
20 needs of the community to be served;
21 or

22 (V) would permit an unfair, de-
23 ceptive, abusive, or unsafe-and-un-
24 sound act or practice.

1 (D) PARENT COMPANY REPORTS.—The
2 Board may, from time to time, require reports
3 under oath from a company that controls an in-
4 termediate holding company, and appropriate
5 officers or directors of such company, solely for
6 purposes of ensuring compliance with the provi-
7 sions of this section (including assessing the
8 company's ability to serve as a source of finan-
9 cial strength pursuant to paragraph (J)) and
10 enforcing such compliance.

11 (E) LIMITED PARENT COMPANY ENFORCE-
12 MENT.—

13 (i) IN GENERAL.—In addition to any
14 other power of the Board, the Board may
15 enforce compliance with the provisions of
16 this subsection which are applicable to any
17 company described in paragraph (1) under
18 section 8 of the Federal Deposit Insurance
19 Act and such company or bank shall be
20 subject to such section (for such purposes)
21 in the same manner and to the same ex-
22 tent as if such company were a bank hold-
23 ing company.

24 (ii) APPLICATION OF OTHER ACT.—

25 Any violation of this subsection by any

1 company that controls an intermediate
2 holding company may also be treated as a
3 violation of the Federal Deposit Insurance
4 Act for purposes of clause (i).

5 (iii) NO EFFECT ON OTHER AUTHOR-
6 ITY.—No provision of this subparagraph
7 shall be construed as limiting any author-
8 ity of the Board or any other Federal
9 agency under any other provision of law.

10 (F) RESTRICTIONS ON AFFILIATE TRANS-
11 ACTIONS.—

12 (i) SECTION 23A AND 23B APPLICA-
13 BILITY.—

14 (I) IN GENERAL.—Transactions
15 between an intermediate holding com-
16 pany (or any nonbank subsidiary
17 thereof) and any affiliate not con-
18 trolled by the intermediate holding
19 company shall be subject to the re-
20 strictions and limitations contained in
21 section 23A and section 23B of the
22 Federal Reserve Act as if the inter-
23 mediate holding company were a
24 member bank, provided, that a trans-
25 action that otherwise would be a cov-

1 ered transaction shall not be a covered
2 transaction if the transaction is in
3 connection with the bona fide acquisi-
4 tion or lease by an unaffiliated person
5 of assets, goods or services but shall
6 be subject to review under section
7 23A(f)(1) of such Act.

8 (II) COVERED TRANSACTIONS.—

9 A depository institution controlled by
10 an intermediate holding company may
11 not engage in a covered transaction
12 (as defined in section 23A(b)(7) of the
13 Federal Reserve Act) with any affil-
14 iate that is not the intermediate hold-
15 ing company or a subsidiary of the in-
16 termediate holding company; provided
17 that, for purposes of the prohibition, a
18 transaction that otherwise would be a
19 covered transaction shall not be a cov-
20 ered transaction if the transaction is
21 in connection with the bona fide ac-
22 quisition or lease by an unaffiliated
23 person of assets, goods or services,
24 but shall be subject to review under

1 section 23A(f)(1) of the Federal Re-
2 serve Act.

3 (ii) RULE OF CONSTRUCTION.—No
4 provision of this subsection shall be con-
5 strued as exempting any subsidiary insured
6 depository institution of an intermediate
7 holding company from compliance with sec-
8 tion 23A or 23B of the Federal Reserve
9 Act with respect to each affiliate of such
10 institution (as defined in section 23A or
11 23B of the Federal Reserve Act), including
12 any affiliate that is the intermediate hold-
13 ing company or subsidiary of the inter-
14 mediate holding company.

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

18 (i) treated as a bank holding company
19 for purposes of section 106 of the Bank
20 Holding Company Act Amendments of
21 1970 and section 22(h) of the Federal Re-
22 serve Act and any regulation prescribed
23 under any such section; and

24 (ii) subject to the restrictions of sec-
25 tion 106 of the Bank Holding Company

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

8 (H) FINANCIAL HOLDING COMPANY RE-
9 QUIREMENTS.—An intermediate holding com-
10 pany shall be subject to—

11 (i) the conditions for engaging in ex-
12 panded financial activities in section 4(l) of
13 the Bank Holding Company Act of 1956;
14 and

15 (ii) the provisions applicable to finan-
16 cial holding companies that fail to meet
17 certain requirements in section 4(m) of the
18 Bank Holding Company Act of 1956.

19 (I) INDEPENDENCE OF INTERMEDIATE
20 HOLDING COMPANY.—

21 (i) No less than 25 percent of the
22 members of the board of directors of an in-
23 termediate holding company, and each sub-
24 sidiary of an intermediate holding com-
25 pany, shall be independent of the parent

1 company of the intermediate holding com-
2 pany and any subsidiary of such parent
3 company. For purposes of this subsection,
4 a director shall be independent of the par-
5 ent company if such person is not cur-
6 rently serving, and has not within the pre-
7 vious 2-year period served, as a director,
8 officer, or employee of any affiliate of the
9 intermediate holding company that is not a
10 subsidiary of the intermediate holding com-
11 pany.

12 (ii) No executive officer of an inter-
13 mediate holding company or any subsidiary
14 of an intermediate holding company may
15 serve as a director, officer, or employee of
16 an affiliate of the intermediate holding
17 company that is not a subsidiary of the in-
18 termediate holding company.

19 (iii) The Board shall issue regulations
20 that require effective legal and operational
21 separation of the functions of an inter-
22 mediate holding company from its affiliates
23 that are not subsidiaries of such inter-
24 mediate holding company, provided, how-
25 ever that such rules shall not require oper-

1 ational separation of internal functions in-
2 cluding, but not limited to, human re-
3 sources management, employee benefit
4 plans, and information technology.

5 (J) SOURCE OF STRENGTH.—A company
6 that directly or indirectly controls an inter-
7 mediate holding company shall serve as a
8 source of financial strength to its subsidiary in-
9 termediate holding company.

10 (K) ACTIVITIES CONDUCTED ABROAD.—
11 Section 4 of the Bank Holding Company Act of
12 1956 shall not apply to any activities that a for-
13 eign financial holding company subject to strict-
14 er standards conducts solely outside the United
15 States if such activities are conducted solely by
16 a company or other entity that is located out-
17 side the United States.

18 (L) FLEXIBLE APPLICATION.—In applying
19 the activity restrictions and ownership limita-
20 tions of section 4 of the Bank Holding Com-
21 pany Act of 1956 to financial holding compa-
22 nies subject to stricter standards described in
23 paragraph (1)(A), the Board shall flexibly
24 adapt such requirements taking into account
25 the usual and customary practices in the busi-

1 ness sector of the financial company subject to
2 stricter standards so as to avoid unnecessary
3 burden and expense.

4 (M) CONDUCT OF ACTIVITIES.—A com-
5 pany that is required to form an intermediate
6 holding company shall conduct all such activi-
7 ties which are permissible for a financial hold-
8 ing company, as determined under section 4(k)
9 of the Bank Holding Company Act of 1956,
10 through such intermediate holding company,
11 other than—

12 (i) internal financial activities con-
13 ducted for such company or any affiliate,
14 including, but not limited to internal treas-
15 ury, investment, and employee benefit
16 functions, provided that with respect to
17 any internal financial activity engaged in
18 for the company or an affiliate and a non-
19 affiliate during the year prior to date of
20 enactment, the company (or an affiliate
21 not a subsidiary of the intermediate com-
22 pany) may continue to engage in that ac-
23 tivity so long as at least $\frac{2}{3}$ of the assets
24 or $\frac{2}{3}$ of the revenues generated from the
25 activity are from or attributable to the

1 company or an affiliate, subject to review
2 by the Board to determine whether engag-
3 ing in such activity presents undue risk to
4 the intermediate company or undue sys-
5 temic risk; and

6 (ii) financial activities involving the
7 provision of credit for the purchase or
8 lease of products or services from an affil-
9 iate or for the purchase or lease of prod-
10 ucts produced by an affiliate of such inter-
11 mediate holding company that is not a sub-
12 sidiary of such intermediate holding com-
13 pany, in accordance with regulations pre-
14 scribed by or orders issued by the Board,
15 pursuant to this paragraph.

16 (N) PROHIBITION ON CERTAIN ACTIVI-
17 TIES.—An intermediate holding company shall
18 be prohibited from conducting any nonbanking
19 activities or investing in any nonbank compa-
20 nies other than those permissible for a financial
21 holding company under sections 3 and 4 of the
22 Bank Holding Company Act of 1956, unless the
23 Board specifically determines otherwise in ac-
24 cordance with subparagraph (C), and provided
25 that, for purposes of this paragraph, a company

1 designated as an intermediate holding company
2 and described under subparagraph (P) (or any
3 permitted successor) is not prohibited from con-
4 tinuing to engage in any impermissible activity
5 in which it was engaged continuously during the
6 6 months prior to the date of enactment, from
7 owning any shares or types of assets related to
8 such activity, or continuing to own such other
9 shares or assets that it owned on the date of
10 enactment.

11 (O) RULE OF CONSTRUCTION.—For pur-
12 poses of this paragraph, designation of an al-
13 ready established intermediate company that
14 will serve as the intermediate holding company
15 shall satisfy the requirement to establish an in-
16 termediate holding company, provided that such
17 existing intermediate holding company complies
18 with all other provisions applicable to an inter-
19 mediate holding company.

20 (P) LIMITATIONS ON AUTHORITY OF COM-
21 MERCIAL PARENT.—A company that is not a
22 bank holding company or treated as a bank
23 holding company pursuant to section 8(a) of
24 the International Bank Act of 1978 that has
25 been notified that it is a financial holding com-

1 pany subject to stricter standards, pursuant to
2 section 124 of the Financial Stability Improve-
3 ment Act of 2010, shall—

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

8 (ii) not be subject to the Bank Hold-
9 ing Company Act of 1956, except for such
10 provisions as are explicitly made applicable
11 in this paragraph.

12 (3) LEVERAGE LIMITATION.—

13 (A) IN GENERAL.—The Board shall re-
14 quire each financial holding company subject to
15 stricter standards to maintain a debt to equity
16 ratio of no more than 15 to 1, and the Board
17 shall issue regulations containing procedures
18 and timelines for how a financial holding com-
19 pany subject to stricter standards with a debt
20 to equity ratio of more than 15 to 1 at the time
21 such company becomes a financial holding com-
22 pany subject to stricter standards shall reduce
23 such ratio.

1 (B) EXEMPTION.—The provisions of sub-
2 paragraph (A) shall not apply to any Federal
3 home loan bank.

4 **SEC. 125. STRICTER PRUDENTIAL STANDARDS FOR CER-**
5 **TAIN FINANCIAL HOLDING COMPANIES FOR**
6 **FINANCIAL STABILITY PURPOSES.**

7 (a) STRICTER PRUDENTIAL STANDARDS.—

8 (1) IN GENERAL.—To mitigate risks to finan-
9 cial stability and the economy posed by a financial
10 holding company that has been subjected to stricter
11 prudential standards in accordance with section 124,
12 the Board, as agent of the Council, shall impose
13 stricter prudential standards on such company. Such
14 standards shall be designed to maximize financial
15 stability taking costs to long-term financial and eco-
16 nomic growth into account, be heightened when com-
17 pared to the standards that otherwise would apply to
18 financial holding companies that are not subjected to
19 stricter prudential standards pursuant to this sub-
20 title (including by addressing additional or different
21 types of risks than otherwise applicable standards),
22 and reflect the potential risk posed to financial sta-
23 bility by the financial holding company subject to
24 stricter standards.

25 (2) STANDARDS.—

1 (A) REQUIRED STANDARDS.—The stricter
2 standards imposed by the Board under this sec-
3 tion shall include—

4 (i) risk-based capital requirements
5 and leverage limits, unless the Board de-
6 termines that such requirements are not
7 appropriate for a financial holding com-
8 pany subject to stricter standards because
9 of such company's activities (such as in-
10 vestment company activities or assets
11 under management) or structure, in which
12 case the Board shall apply other standards
13 that result in appropriately stringent con-
14 trols.

15 (ii) liquidity requirements;

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

18 (iv) prompt corrective action require-
19 ments (as specified in subsection (e));

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

22 (vi) overall risk management require-
23 ments.

24 (B) ADDITIONAL STANDARDS.—The
25 heightened standards imposed by the Board

1 under this section also may include short-term
2 debt limits prescribed in accordance with sub-
3 section (d) and any other prudential standards
4 that the Board deems advisable, including tak-
5 ing actions to mitigate systemic risk.

6 (C) CONSULTATION WITH FEDERAL FI-
7 NANCIAL REGULATORY AGENCIES AND THE
8 FEDERAL INSURANCE OFFICE.—The Board, in
9 developing stricter prudential standards under
10 this subsection, shall consult with other Federal
11 financial regulatory agencies with respect to
12 any standard that is likely to have a significant
13 impact on a functionally regulated subsidiary,
14 or a subsidiary depository institution, of a fi-
15 nancial holding company that is subject to
16 stricter prudential standards under this title.
17 With respect to a financial holding company
18 subject to stricter standards that is an insur-
19 ance company or any insurance company sub-
20 sidiary of such a financial holding company
21 subject to stricter standards, the Board shall
22 also consult with the Federal Insurance Office.

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

1 (A) may differentiate among financial
2 holding companies subject to stricter standards
3 on an individual basis or by category, taking
4 into consideration their capital structure, risk,
5 complexity, financial activities, the financial ac-
6 tivities of their subsidiaries, and any other fac-
7 tors that the Board deems appropriate; and

8 (B) shall take into consideration whether
9 and to what extent a financial holding company
10 subject to stricter standards that is not a bank
11 holding company or treated as a bank holding
12 company owns or controls a depository institu-
13 tion and shall adapt the prudential standards
14 applied to such company as appropriate in light
15 of any predominant line of business of such
16 company, including assets under management
17 or other activities for which capital require-
18 ments are not appropriate.

19 (4) WELL CAPITALIZED AND WELL MAN-
20 AGED.—A financial holding company subject to
21 stricter standards shall at all times after it is subject
22 to such standards be well capitalized and well man-
23 aged as defined by the Board.

24 (5) APPLICATION TO FOREIGN FINANCIAL COM-
25 PANIES.—The Board shall prescribe regulations re-

1 garding the application of stricter prudential stand-
2 ards to a foreign financial parent and to a Federal
3 or State branch, subsidiary, or operating entity that
4 is owned or controlled by a foreign financial parent,
5 giving due regard to principles of national treatment
6 and equality of competitive opportunity and taking
7 into account the extent to which the foreign financial
8 parent is subject on a consolidated basis to home
9 country standards comparable to those applied to fi-
10 nancial holding companies in the United States.

11 (6) INCLUSION OF OFF BALANCE SHEET AC-
12 TIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

13 (A) IN GENERAL.—In the case of any fi-
14 nancial holding company subject to stricter
15 standards, the computation of capital require-
16 ments shall take into account off balance sheet
17 activities for such a company.

18 (B) EXEMPTION.—If the Board determines
19 that an exemption from the requirements under
20 subparagraph (A) is appropriate, the Board
21 may exempt a financial holding company sub-
22 ject to stricter standards from the requirements
23 under subparagraph (A) or any transaction or
24 transactions engaged in by such a company.

1 (C) OFF BALANCE SHEET ACTIVITIES DE-
2 FINED.—For purposes of this paragraph, the
3 term “off balance sheet activities” means a li-
4 ability that is not currently a balance sheet li-
5 ability but may become one upon the happening
6 of some future event, including the following
7 transactions, to the extent they may create a li-
8 ability:

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

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

15 (iii) Risk participation in bankers’ ac-
16 ceptances.

17 (iv) Sale and repurchase agreements.

18 (v) Asset sales with recourse against
19 the seller.

20 (vi) Interest rate swaps.

21 (vii) Credit swaps.

22 (viii) Commodity contracts.

23 (ix) Forward contracts.

24 (x) Securities contracts.

1 (xi) Such other activities or trans-
2 actions as the Board may, by rule, define.

3 (b) PRUDENTIAL STANDARDS AT FUNCTIONALLY
4 REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSI-
5 TORY INSTITUTIONS.—

6 (1) BOARD AUTHORITY TO RECOMMEND STAND-
7 ARDS.—With respect to a functionally regulated sub-
8 sidiary (as such term is defined in section 5 of the
9 Bank Holding Company Act) or a subsidiary deposi-
10 tory institution of a financial holding company sub-
11 ject to stricter standards, the Board may rec-
12 ommend that the relevant Federal financial regu-
13 latory agency for such functionally regulated sub-
14 sidiary or subsidiary depository institution prescribe
15 stricter prudential standards on such functionally
16 regulated subsidiary or subsidiary depository institu-
17 tion. Any standards recommended by the Board
18 under this section shall be of the same type as those
19 described in subsection (a)(2) that the Board is re-
20 quired or authorized to impose directly on the finan-
21 cial holding company subject to stricter standards.

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

1 thorized to impose, require reports regarding, exam-
2 ine for compliance with, and enforce standards
3 under this subsection with respect to the entities
4 such agency regulates as described in section
5 116(b)(6). This authority is in addition to and does
6 not limit any other authority of the Federal financial
7 regulatory agencies. Compliance by an entity with
8 actions taken by a Federal financial regulatory agen-
9 cy under this section shall be enforceable in accord-
10 ance with the statutes governing the respective agen-
11 cy's jurisdiction over the entity as if the agency ac-
12 tion were taken under those statutes.

13 (3) IMPOSITION OF STANDARDS.—Standards
14 imposed by a Federal financial regulatory agency
15 under this subsection shall be the standards rec-
16 ommended by the Board in accordance with para-
17 graph (1) or any other similar standards that the
18 Board deems acceptable after consultation between
19 the Board and the primary financial regulatory
20 agency and, with respect to an insurance company,
21 the Federal Insurance Office.

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

1 what extent the agency has imposed the stricter pru-
2 dential standards described in paragraph (3) within
3 60 days of the Board's recommendation under para-
4 graph (1). A Federal financial regulatory agency
5 that fails to impose such standards shall provide
6 specific justification for such failure to act in the
7 written notice from the agency to the Council and
8 Board.

9 (c) CONCENTRATION LIMITS FOR FINANCIAL HOLD-
10 ING COMPANIES SUBJECT TO STRICTER STANDARDS.—

11 (1) STANDARDS.—In order to limit the risks
12 that the failure of any company could pose to a fi-
13 nancial holding company subject to stricter stand-
14 ards and to the stability of the United States finan-
15 cial system, the Board, by regulation, shall prescribe
16 standards that limit the risks posed by the exposure
17 of a financial holding company subject to stricter
18 standards to any other company.

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

1 as the Board may determine by regulation to be nec-
2 essary to mitigate risks to financial stability.

3 (3) CREDIT EXPOSURE.—For purposes of this
4 subsection and with respect to a financial holding
5 company subject to stricter standards, the term
6 “credit exposure” to a company means—

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

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

11 (C) all securities borrowing and lending
12 transactions with the company to the extent
13 that such transactions create credit exposure of
14 the financial holding company subject to strict-
15 er standards to the company;

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

19 (E) all purchases of or investment in secu-
20 rities issued by the company;

21 (F) counterparty credit exposure to the
22 company in connection with a derivative trans-
23 action between the financial holding company
24 subject to stricter standards and the company;
25 and

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

4 (4) ATTRIBUTION RULE.—For purposes of this
5 subsection, any transaction by a financial holding
6 company subject to stricter standards with any per-
7 son is deemed a transaction with a company to the
8 extent that the proceeds of the transaction are used
9 for the benefit of, or transferred to, that company.

10 (5) RULEMAKING.—The Board may issue such
11 regulations and orders, including definitions con-
12 sistent with this subsection, as may be necessary to
13 administer and carry out the purpose of this sub-
14 section.

15 (6) EXEMPTIONS.—

16 (A) IN GENERAL.—

17 (i) FEDERAL HOME LOAN BANKS.—

18 This subsection shall not apply to any Fed-
19 eral home loan bank, but Federal home
20 loan banks are not exempt from any other
21 provision of this title except as specifically
22 provided in this title.

23 (ii) APPLICABILITY TO OTHER ENTI-
24 TIES.—The Federal National Mortgage As-
25 sociation and the Federal Home Loan

1 Mortgage Corporation are not exempt from
2 any provision of this title except as specifi-
3 cally provided in this title.

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

10 (7) TRANSITION PERIOD.—This subsection and
11 any regulations and orders of the Board under the
12 authority of this subsection shall not take effect
13 until the date that is 3 years from the date of the
14 enactment of this subsection. The Board may extend
15 the effective date for up to 2 additional years to pro-
16 mote financial stability.

17 (d) SHORT-TERM DEBT LIMITS FOR CERTAIN FI-
18 NANCIAL HOLDING COMPANIES.—

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

1 nancial holding company subject to stricter stand-
2 ards for purposes of this title.

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

8 (3) SHORT-TERM DEBT DEFINED.—For pur-
9 poses of this subsection, the term “short-term debt”
10 means such liabilities with short-dated maturity that
11 the Board identifies by regulation, except that such
12 term does not include insured deposits.

13 (4) RULEMAKING AUTHORITY.—In addition to
14 prescribing regulations under paragraphs (1) and
15 (3), the Board may prescribe such regulations, in-
16 cluding definitions consistent with this subsection,
17 and issue such orders as may be necessary to carry
18 out this subsection.

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

1 tion, issue to such company an exemption from or
2 adjustment to the limit prescribed under paragraph
3 (1).

4 (e) PROMPT CORRECTIVE ACTION FOR FINANCIAL
5 HOLDING COMPANIES SUBJECT TO STRICTER STAND-
6 ARDS.—

7 (1) PROMPT CORRECTIVE ACTION REQUIRED.—

8 The Board shall take prompt corrective action to re-
9 solve the problems of financial holding companies
10 subject to stricter standards. Except as specifically
11 provided otherwise, this subsection shall apply only
12 to financial holding companies that are incorporated
13 or organized under United States laws.

14 (2) DEFINITIONS.—For purposes of this sec-
15 tion—

16 (A) CAPITAL CATEGORIES.—

17 (i) WELL CAPITALIZED.—A financial
18 holding company subject to stricter stand-
19 ards is “well capitalized” if it exceeds the
20 required minimum level for each relevant
21 capital measure.

22 (ii) UNDERCAPITALIZED.—A financial
23 holding company subject to stricter stand-
24 ards is “undercapitalized” if it fails to

1 meet the required minimum level for any
2 relevant capital measure.

3 (iii) SIGNIFICANTLY UNDERCAPITAL-
4 IZED.—A financial holding company sub-
5 ject to stricter standards is “significantly
6 undercapitalized” if it is significantly below
7 the required minimum level for any rel-
8 evant capital measure. The Board shall de-
9 fine by rule or regulation the term “signifi-
10 cantly undercapitalized” at a threshold the
11 Board determines to be prudent for the ef-
12 fective monitoring, management and over-
13 sight of the financial system.

14 (iv) CRITICALLY UNDERCAPITAL-
15 IZED.—A financial holding company sub-
16 ject to stricter standards is “critically
17 undercapitalized” if it fails to meet any
18 level specified in paragraph (4)(C)(i).

19 (3) OTHER DEFINITIONS.—

20 (A) AVERAGE.—The “average” of an ac-
21 counting item (such as total assets or tangible
22 equity) during a given period means the sum of
23 that item at the close of business on each busi-
24 ness day during that period divided by the total
25 number of business days in that period.

1 (B) CAPITAL DISTRIBUTION.—The term
2 “capital distribution” means—

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

11 (ii) a payment by a financial holding
12 company subject to stricter standards to
13 repurchase, redeem, retire, or otherwise ac-
14 quire any of its shares or other ownership
15 interests, including any extension of credit
16 to finance any person’s acquisition of those
17 shares or interests; and

18 (iii) a transaction that the Board de-
19 termines, by order or regulation, to be in
20 substance a distribution of capital to the
21 owners of the financial holding company
22 subject to stricter standards.

23 (C) CAPITAL RESTORATION PLAN.—The
24 term “capital restoration plan” means a plan
25 submitted under paragraph (6)(B).

1 (D) COMPENSATION.—The term “com-
2 pensation” includes any payment of money or
3 provision of any other thing of value in consid-
4 eration of employment.

5 (E) RELEVANT CAPITAL MEASURE.—The
6 term “relevant capital measure” means the
7 measures described in paragraph (4).

8 (F) REQUIRED MINIMUM LEVEL.—The
9 term “required minimum level” means, with re-
10 spect to each relevant capital measure, the min-
11 imum acceptable capital level specified by the
12 Board by regulation.

13 (G) SENIOR EXECUTIVE OFFICER.—The
14 term “senior executive officer” has the same
15 meaning as the term “executive officer” in sec-
16 tion 22(h) of the Federal Reserve Act (12
17 U.S.C. 375b).

18 (4) CAPITAL STANDARDS.—

19 (A) RELEVANT CAPITAL MEASURES.—

20 (i) IN GENERAL.—Except as provided
21 in clause (ii)(II), the capital standards pre-
22 scribed by the Board under section
23 125(a)(2) shall include—

24 (I) a leverage limit; and

1 (II) a risk-based capital require-
2 ment.

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

5 (I) establish any additional rel-
6 evant capital measures to carry out
7 this section; or

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

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

19 (C) CRITICAL CAPITAL.—

20 (i) BOARD TO SPECIFY LEVEL.—

21 (I) LEVERAGE LIMIT.—The
22 Board shall, by regulation, specify the
23 ratio of tangible equity to total assets
24 at which a financial holding company

1 subject to stricter standards is criti-
2 cally undercapitalized.

3 (II) OTHER RELEVANT CAPITAL
4 MEASURES.—The Board may, by reg-
5 ulation, specify for 1 or more other
6 relevant capital measures, the level at
7 which a financial holding company
8 subject to stricter standards is criti-
9 cally undercapitalized.

10 (ii) LEVERAGE LIMIT RANGE.—The
11 level specified under clause (i)(I) shall re-
12 quire tangible equity in an amount—

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

15 (II) except as provided in sub-
16 clause (I), not more than 65 percent
17 of the required minimum level of cap-
18 ital under the leverage limit.

19 (5) CAPITAL DISTRIBUTIONS RESTRICTED.—

20 (A) IN GENERAL.—A financial holding
21 company subject to stricter standards shall
22 make no capital distribution if, after making
23 the distribution, the financial holding company
24 subject to stricter standards would be under-
25 capitalized.

1 (B) EXCEPTION.—Notwithstanding sub-
2 paragraph (A), the Board may permit a finan-
3 cial holding company subject to stricter stand-
4 ards to repurchase, redeem, retire, or otherwise
5 acquire shares or ownership interests if the re-
6 purchase, redemption, retirement, or other ac-
7 quisition—

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

13 (ii) will reduce the financial obliga-
14 tions of the financial holding company sub-
15 ject to stricter standards or otherwise im-
16 prove the financial condition of the finan-
17 cial holding company subject to stricter
18 standards.

19 (6) PROVISIONS APPLICABLE TO UNDER-
20 CAPITALIZED FINANCIAL HOLDING COMPANY SUB-
21 JECT TO STRICTER STANDARDS.—

22 (A) MONITORING REQUIRED.—The Board
23 shall—

1 (i) closely monitor the condition of
2 any undercapitalized financial holding com-
3 pany subject to stricter standards;

4 (ii) closely monitor compliance by any
5 undercapitalized financial holding company
6 subject to stricter standards with capital
7 restoration plans, restrictions, and require-
8 ments imposed under this section; and

9 (iii) periodically review the plan, re-
10 strictions, and requirements applicable to
11 any undercapitalized financial holding com-
12 pany subject to stricter standards to deter-
13 mine whether the plan, restrictions, and
14 requirements are effective.

15 (B) CAPITAL RESTORATION PLAN RE-
16 QUIRED.—

17 (i) IN GENERAL.—Any undercapital-
18 ized financial holding company subject to
19 stricter standards shall submit an accept-
20 able capital restoration plan to the Board
21 within the time allowed by the Board
22 under clause (iv).

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

25 (I) specify—

1 (aa) the steps the financial
2 holding company subject to
3 stricter standards will take to be-
4 come well capitalized;

5 (bb) the levels of capital to
6 be attained by the financial hold-
7 ing company subject to stricter
8 standards during each year in
9 which the plan will be in effect;

10 (cc) how the financial hold-
11 ing company subject to stricter
12 standards will comply with the
13 restrictions or requirements then
14 in effect under this section; and

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

20 (II) contain such other informa-
21 tion that the Board may require.

22 (iii) CRITERIA FOR ACCEPTING
23 PLAN.—The Board shall not accept a cap-
24 ital restoration plan unless it determines
25 that the plan—

1 (I) complies with clause (ii);

2 (II) is based on realistic assump-
3 tions, and is likely to succeed in re-
4 storing the capital of the financial
5 holding company subject to stricter
6 standards; and

7 (III) would not appreciably in-
8 crease the risk (including credit risk,
9 interest-rate risk, and other types of
10 risk) to which the financial holding
11 company subject to stricter standards
12 is exposed.

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

16 (I) provide financial holding com-
17 panies subject to stricter standards
18 with reasonable time to submit capital
19 restoration plans, and generally re-
20 quire a financial holding company
21 subject to stricter standards to submit
22 a plan not later than 45 days after it
23 becomes undercapitalized; and

24 (II) require the Board to act on
25 capital restoration plans expeditiously,

1 and generally not later than 60 days
2 after the plan is submitted.

3 (C) ASSET GROWTH RESTRICTED.—An
4 undercapitalized financial holding company sub-
5 ject to stricter standards shall not permit its
6 average total assets during any calendar quar-
7 ter to exceed its average total assets during the
8 preceding calendar quarter unless—

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

12 (ii) any increase in total assets is con-
13 sistent with the plan; and

14 (iii) the ratio of tangible equity to
15 total assets of the financial holding com-
16 pany subject to stricter standards increases
17 during the calendar quarter at a rate suffi-
18 cient to enable it to become well capitalized
19 within a reasonable time.

20 (D) PRIOR APPROVAL REQUIRED FOR AC-
21 QUISSIONS AND NEW LINES OF BUSINESS.—An
22 undercapitalized financial holding company sub-
23 ject to stricter standards shall not, directly or
24 indirectly, acquire any interest in any company

1 or insured depository institution, or engage in
2 any new line of business, unless—

3 (i) the Board has accepted the capital
4 restoration plan of the financial holding
5 company subject to stricter standards, the
6 financial holding company subject to strict-
7 er standards is implementing the plan, and
8 the Board determines that the proposed
9 action is consistent with and will further
10 the achievement of the plan;

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

13 (iii) the Board has exempted the fi-
14 nancial holding company subject to stricter
15 standards from the requirements of this
16 paragraph with respect to the class of ac-
17 quisitions that includes the proposed ac-
18 tion.

19 (E) DISCRETIONARY SAFEGUARDS.—The
20 Board may, with respect to any undercapital-
21 ized financial holding company subject to strict-
22 er standards, take actions described in any
23 clause of paragraph (7)(B) if the Board deter-
24 mines that those actions are necessary. The
25 Board, in determining whether to impose any

1 requirement under this subparagraph that is
2 likely to have a significant effect on a function-
3 ally regulated subsidiary, subsidiary depository
4 institution, or insurance company subsidiary of
5 a financial holding company subject to stricter
6 standards, shall consult with the primary finan-
7 cial regulatory agency for such subsidiary. In
8 the case of an insurance company subsidiary of
9 a financial holding company subject to stricter
10 standards, the Board shall consult with the
11 Federal Insurance Office.

12 (7) PROVISIONS APPLICABLE TO SIGNIFICANTLY
13 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-
14 NIES SUBJECT TO STRICTER STANDARDS AND
15 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-
16 NIES SUBJECT TO STRICTER STANDARDS THAT FAIL
17 TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION
18 PLANS.—

19 (A) IN GENERAL.—This paragraph shall
20 apply with respect to any financial holding com-
21 pany subject to stricter standards that—

22 (i) is significantly undercapitalized; or
23 (ii) is undercapitalized and—

24 (I) fails to submit an acceptable
25 capital restoration plan within the

1 time allowed by the Board under
2 paragraph (6)(B)(iv); or

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

6 (B) SPECIFIC ACTIONS AUTHORIZED.—The
7 Board shall carry out this paragraph by taking
8 1 or more of the following actions:

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

11 (I) Requiring the financial hold-
12 ing company subject to stricter stand-
13 ards to sell enough shares or obliga-
14 tions of the financial holding company
15 subject to stricter standards so that
16 the financial holding company subject
17 to stricter standards will be well cap-
18 italized after the sale.

19 (II) Further requiring that in-
20 struments sold under subclause (I) be
21 voting shares.

22 (III) Requiring the financial
23 holding company subject to stricter
24 standards to be acquired by or com-
25 bine with another company.

1 (ii) RESTRICTING TRANSACTIONS
2 WITH AFFILIATES.—

3 (I) Requiring the financial hold-
4 ing company subject to stricter stand-
5 ards to comply with section 23A of
6 the Federal Reserve Act (12 U.S.C.
7 371e), as if it were a member bank.

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

12 (iii) RESTRICTING ASSET GROWTH.—
13 Restricting the asset growth of the finan-
14 cial holding company subject to stricter
15 standards more stringently than paragraph
16 (6)(C), or requiring the financial holding
17 company subject to stricter standards to
18 reduce its total assets.

19 (iv) RESTRICTING ACTIVITIES.—Re-
20 quiring the financial holding company sub-
21 ject to stricter standards or any of its sub-
22 sidiaries to alter, reduce, or terminate any
23 activity that the Board determines poses
24 excessive risk to the financial holding com-
25 pany subject to stricter standards.

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

3 (I) NEW ELECTION OF DIREC-
4 TORS.—Ordering a new election for
5 the board of directors of the financial
6 holding company subject to stricter
7 standards.

8 (II) DISMISSING DIRECTORS OR
9 SENIOR EXECUTIVE OFFICERS.—Re-
10 quiring the financial holding company
11 subject to stricter standards to dis-
12 miss from office any director or senior
13 executive officer who had held office
14 for more than 180 days immediately
15 before the financial holding company
16 subject to stricter standards became
17 undercapitalized. Dismissal under this
18 clause shall not be construed to be a
19 removal under section 8 of the Fed-
20 eral Deposit Insurance Act (12 U.S.C.
21 1818).

22 (III) EMPLOYING QUALIFIED
23 SENIOR EXECUTIVE OFFICERS.—Re-
24 quiring the financial holding company
25 subject to stricter standards to employ

1 qualified senior executive officers
2 (who, if the Board so specifies, shall
3 be subject to approval by the Board).

4 (vi) REQUIRING DIVESTITURE.—Re-
5 quiring the financial holding company sub-
6 ject to stricter standards to divest itself of
7 or liquidate any subsidiary if the Board de-
8 termines that the subsidiary is in danger
9 of becoming insolvent, poses a significant
10 risk to the financial holding company sub-
11 ject to stricter standards, or is likely to
12 cause a significant dissipation of the assets
13 or earnings of the financial holding com-
14 pany subject to stricter standards.

15 (vii) REQUIRING OTHER ACTION.—Re-
16 quiring the financial holding company sub-
17 ject to stricter standards to take any other
18 action that the Board determines will bet-
19 ter carry out the purpose of this section
20 than any of the actions described in this
21 subparagraph.

22 (C) PRESUMPTION IN FAVOR OF CERTAIN
23 ACTIONS.—In complying with subparagraph
24 (B), the Board shall take the following actions,

1 unless the Board determines that the actions
2 would not be appropriate:

3 (i) The action described in subclause
4 (I) or (III) of subparagraph (B)(i) (relat-
5 ing to requiring the sale of shares or obli-
6 gations, or requiring the financial holding
7 company subject to stricter standards to be
8 acquired by or combine with another com-
9 pany).

10 (ii) The action described in subpara-
11 graph (B)(ii) (relating to restricting trans-
12 actions with affiliates).

13 (D) SENIOR EXECUTIVE OFFICERS' COM-
14 PENSATION RESTRICTED.—

15 (i) IN GENERAL.—The financial hold-
16 ing company subject to stricter standards
17 shall not do any of the following without
18 the prior written approval of the Board:

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

21 (II) Provide compensation to any
22 senior executive officer at a rate ex-
23 ceeding that officer's average rate of
24 compensation (excluding bonuses,
25 stock options, and profit-sharing) dur-

1 ing the 12 calendar months preceding
2 the calendar month in which the fi-
3 nancial holding company subject to
4 stricter standards became under-
5 capitalized.

6 (ii) FAILING TO SUBMIT PLAN.—The
7 Board shall not grant any approval under
8 clause (i) with respect to a financial hold-
9 ing company subject to stricter standards
10 that has failed to submit an acceptable
11 capital restoration plan.

12 (E) CONSULTATION WITH OTHER REGU-
13 LATORS.—Before the Board makes a deter-
14 mination under subparagraph (B)(vi) with re-
15 spect to a subsidiary that is a broker, dealer,
16 government securities broker, government secu-
17 rities dealer, investment company, or invest-
18 ment adviser, the Board shall consult with the
19 Securities and Exchange Commission and, in
20 the case of any other subsidiary which is sub-
21 ject to any financial responsibility or capital re-
22 quirement, any other appropriate regulator of
23 such subsidiary with respect to the proposed de-
24 termination of the Board and actions pursuant
25 to such determination.

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

3 (A) IN GENERAL.—If the Board deter-
4 mines (after notice and an opportunity for
5 hearing) that a financial holding company sub-
6 ject to stricter standards is in an unsafe or un-
7 sound condition or, pursuant to section 8(b)(8)
8 of the Federal Deposit Insurance Act (12
9 U.S.C. 1818(b)(8)), deems the financial holding
10 company subject to stricter standards to be en-
11 gaging in an unsafe or unsound practice, the
12 Board may—

13 (i) if the financial holding company
14 subject to stricter standards is well capital-
15 ized, require the financial holding company
16 subject to stricter standards to comply
17 with one or more provisions of paragraphs
18 (6) and (7), as if the institution were
19 undercapitalized; or

20 (ii) if the financial holding company
21 subject to stricter standards is under-
22 capitalized, take any one or more actions
23 authorized under paragraph (7)(B) as if
24 the financial holding company subject to
25 stricter standards were significantly under-

1 capitalized, after consultation with the pri-
2 mary financial regulatory agency for any
3 functionally regulated subsidiary, sub-
4 sidiary depository institution, or insurance
5 company subsidiary that is likely to be sig-
6 nificantly affected by such actions. In the
7 case of an insurance company subsidiary of
8 a financial holding company subject to
9 stricter standards, the Board shall consult
10 with the Federal Insurance Office.

11 (B) CONTENTS OF PLAN.—A plan that
12 may be required pursuant to subparagraph
13 (A)(i) shall specify the steps that the financial
14 holding company subject to stricter standards
15 will take to correct the unsafe or unsound con-
16 dition or practice.

17 (9) IMPLEMENTATION.—The Board shall pre-
18 scribe such regulations, issue such orders, and take
19 such other actions the Board determines to be nec-
20 essary to carry out this subsection.

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

1 (11) CONSULTATION.—The Board and the Sec-
2 retary of the Treasury shall consult with their for-
3 eign counterparts and through appropriate multilat-
4 eral organizations to reach agreement to extend
5 comprehensive and robust prudential supervision and
6 regulation to all highly leveraged and substantially
7 interconnected financial companies.

8 (12) ADMINISTRATIVE REVIEW OF DISMISSAL
9 ORDERS.—

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

17 (B) PROCEDURE.—

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

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

23 (II) appear, personally or
24 through counsel, before 1 or more

1 members of the Board or designated
2 employees of the Board.

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

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

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

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

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

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

21 (III) notify the petitioner of the
22 order.

23 (C) STANDARD FOR REVIEW OF DISMISSAL
24 ORDERS.—The petitioner shall bear the burden
25 of proving that the petitioner's continued em-

1 ployment would materially strengthen the abil-
2 ity of the financial holding company subject to
3 stricter standards—

4 (i) to become well capitalized, to the
5 extent that the order is based on the cap-
6 ital level of the financial holding company
7 subject to stricter standards or such com-
8 pany's failure to submit or implement a
9 capital restoration plan; and

10 (ii) to correct the unsafe or unsound
11 condition or unsafe or unsound practice, to
12 the extent that the order is based on para-
13 graph (8)(A).

14 (13) ENFORCEMENT AUTHORITY FOR FOREIGN
15 FINANCIAL HOLDING COMPANY SUBJECT TO STRICT-
16 ER STANDARDS.—

17 (A) TERMINATION AUTHORITY.—If the
18 Board believes that a condition, practice, or ac-
19 tivity of a foreign financial holding company
20 subject to stricter standards does not comply
21 with this title or the rules or orders prescribed
22 by the Board under this title or otherwise poses
23 a threat to financial stability, the Board may,
24 after notice and opportunity for a hearing, take
25 such actions as necessary to mitigate such risk,

1 including ordering a foreign financial holding
2 company subject to stricter standards in the
3 United States to terminate the activities of such
4 branch, agency, or subsidiary.

5 (B) DISCRETION TO DENY HEARING.—The
6 Board may issue an order under paragraph (1)
7 without providing for an opportunity for a hear-
8 ing if the Board determines that expeditious ac-
9 tion is necessary in order to protect the public
10 interest.

11 (f) REPORTS REGARDING RAPID AND ORDERLY RES-
12 OLUTION AND CREDIT EXPOSURE.—

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

17 (A) its plan for rapid and orderly resolu-
18 tion in the event of severe financial distress;

19 (B) the nature and extent to which the fi-
20 nancial holding company subject to stricter
21 standards has credit exposure to other signifi-
22 cant financial companies; and

23 (C) the nature and extent to which other
24 significant financial companies have credit ex-

1 posure to the financial holding company subject
2 to stricter standards.

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

10 (3) REPORTING TRIGGERED BY STRESS TEST
11 RESULTS.—

12 (A) FINANCIAL HOLDING COMPANIES SUB-
13 JECT TO STRICTER STANDARDS.—Each time
14 the results of a quarterly stress test under base-
15 line or adverse conditions conducted by a finan-
16 cial holding company subject to stricter stand-
17 ards under section 132(a) or the results of a
18 stress test of that financial holding company
19 subject to stricter standards conducted by the
20 Board under subsection (g) indicate that the fi-
21 nancial holding company subject to stricter
22 standards is, in the determination of the Board,
23 significantly or critically undercapitalized, that
24 financial holding company subject to stricter
25 standards shall submit a rapid resolution plan

1 in accordance with this subsection that has
2 been revised to address the causes of those re-
3 sults.

4 (B) FINANCIAL COMPANIES THAT ARE NOT
5 FINANCIAL HOLDING COMPANIES SUBJECT TO
6 STRICTER STANDARDS.—Each time the results
7 of a semiannual stress test under baseline or
8 adverse conditions conducted by a financial
9 company under section 132(b) indicate that the
10 financial company is, in the determination of
11 the Board, significantly or critically under-
12 capitalized, that financial company shall be re-
13 quired to report under this subsection. The
14 Board shall prescribe regulations establishing
15 expedited procedures for such reporting.

16 (C) TRANSPARENCY.—Any rapid resolution
17 plan submitted pursuant to this paragraph shall
18 be subject to any restrictions regarding the dis-
19 closure of any other rapid resolution plan sub-
20 mitted pursuant to this subsection.

21 (g) STRESS TESTS.—

22 (1) The Board, in coordination with the appro-
23 priate primary financial regulatory agency, shall
24 conduct annual stress tests of each financial holding
25 company subject to stricter standards. The Board

1 may, as the Board determines appropriate, conduct
2 stress tests of financial companies that are not fi-
3 nancial holding companies subject to stricter stand-
4 ards. The Board shall publish a summary of the re-
5 sults of such stress tests.

6 (2) The Board shall issue regulations to define
7 the term “stress test” for purposes of this sub-
8 section. Such a definition shall provide for not less
9 than 3 different sets of conditions under which a
10 stress test should be conducted: baseline, adverse,
11 and severely adverse scenarios.

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

17 (i) RESOLUTION PLANS REQUIRED.—

18 (1) IN GENERAL.—The Corporation and the
19 Board, after consultation with the Council, shall
20 jointly issue regulations requiring financial holding
21 companies subject to stricter standards to develop
22 plans designed to assist in the rapid and orderly res-
23 olution of the company.

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

1 (A) define the scope of financial holding
2 companies subject to stricter standards covered
3 by these requirements and may exempt finan-
4 cial holding companies subject to stricter stand-
5 ards from the requirements of this subsection if
6 the Corporation and the Board jointly deter-
7 mine that exemption is consistent with the pur-
8 poses of this title;

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

16 (C) require that each plan include informa-
17 tion detailing—

18 (i) the nature and extent to which the
19 financial holding company subject to strict-
20 er standards has credit exposure to other
21 significant financial companies;

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

1 (iii) full descriptions of the financial
2 holding company subject to stricter stand-
3 ards' ownership structure, assets, liabil-
4 ities, and contractual obligations; and

5 (iv) the cross-guarantees tied to dif-
6 ferent securities, a list of major
7 counterparties, and a process for deter-
8 mining where the financial holding com-
9 pany subject to stricter standards' collat-
10 eral is pledged; and

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

14 (3) REVIEW OF PLANS.—

15 (A) SUBMISSION OF PLANS.—Each finan-
16 cial holding company subject to stricter stand-
17 ards that is subject to the requirement under
18 paragraph (1) shall submit its plan to the Cor-
19 poration and the Board.

20 (B) REVIEW.—Upon the submission of a
21 plan pursuant to subparagraph (A), and not
22 less often than annually thereafter, the Cor-
23 poration and the Board, after consultation with
24 any Federal financial regulatory agencies with
25 jurisdiction over the financial holding company

1 subject to stricter standards (and, if the finan-
2 cial holding company subject to stricter stand-
3 ards is an insurance company, the Federal In-
4 surance Office), shall jointly review such plan
5 and may require a financial holding company
6 subject to stricter standards to revise its plan
7 consistent with the standards established pursu-
8 ant to paragraph (2).

9 (4) ENFORCEMENT.—

10 (A) IN GENERAL.—The Corporation, after
11 consultation with the Board, shall have the au-
12 thority to take any enforcement action in sec-
13 tion 8 of the Federal Deposit Insurance Act (12
14 U.S.C. 1818) against any financial holding
15 company subject to stricter standards that fails
16 to comply with the requirements of this section
17 or any regulations issued pursuant to this sec-
18 tion.

19 (B) NO LIMITATION ON BOARD AUTHOR-
20 ITY.—Nothing under this subsection shall be
21 construed as limiting any enforcement authority
22 available to the Board under any other provi-
23 sion of law.

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

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

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

9 (j) RULE OF CONSTRUCTION REGARDING CONSUMER
10 PROTECTION STANDARDS.—The prudential standards im-
11 posed or recommended by the Board or the Council under
12 this section shall not be construed as superseding—

13 (1) any consumer protection standards promul-
14 gated under a State or Federal consumer protection
15 law, including the Consumer Financial Protection
16 Agency Act and the Federal Trade Commission Act;
17 or

18 (2) any investor protection standard that pro-
19 tects consumers (including public reporting require-
20 ments) imposed under State or Federal securities
21 laws, including the Securities Act of 1933, the Secu-
22 rities Exchange Act of 1934, the Investment Com-
23 pany Act of 1944, and the Investment Advisors Act
24 of 1944.

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

5 **SEC. 126. MITIGATION OF SYSTEMIC RISK.**

6 (a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS
7 AND ACTIVITIES.—If the Council determines, after notice
8 and an opportunity for hearing, that despite the higher
9 prudential standards imposed pursuant to section
10 125(a)(2), the size of a financial holding company subject
11 to stricter standards or the scope, nature, scale, concentra-
12 tion, interconnectedness, or mix of activities directly or in-
13 directly conducted by a financial holding company subject
14 to stricter standards poses a grave threat to the financial
15 stability or economy of the United States, the Council
16 shall require the company to undertake 1 or more mitiga-
17 tory actions described in subsection (d).

18 (b) CONSULTATION WITH FEDERAL FINANCIAL
19 REGULATORY AGENCIES.—The Council, in determining
20 whether to impose any requirement under this section that
21 is likely to have a significant impact on a functionally reg-
22 ulated subsidiary, or a subsidiary depository institution,
23 of a financial holding company subject to stricter stand-
24 ards under this title, shall consult with the Federal finan-
25 cial regulatory agency for any such subsidiary. With re-

1 spect to any requirements under this section that is likely
2 to have a significant effect on an insurance company, the
3 Council shall consult with the Federal Insurance Office.

4 (c) FACTORS FOR CONSIDERATION.—In reaching a
5 determination described in subsection (a), the Council
6 shall take into consideration the following factors, as ap-
7 propriate—

8 (1) the amount and nature of the company's fi-
9 nancial assets;

10 (2) the amount and nature of the company's li-
11 abilities, including the degree of reliance on short-
12 term funding;

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

15 (4) the company's reliance on leverage;

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

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

23 (7) the scope, nature, size, scale, concentration,
24 interconnectedness and mix of the company's activi-
25 ties;

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

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

5 (d) MITIGATORY ACTIONS.—

6 (1) IN GENERAL.—Mitigatory action may in-
7 clude—

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

10 (B) terminating 1 or more activities;

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

14 (D) limiting the ability to merge with, ac-
15 quire, consolidate with, or otherwise become af-
16 filiated with another company;

17 (E) restricting the ability to offer a finan-
18 cial product or products; and

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

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

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

7 (B) the extent to which other countries
8 with a significant financial services industry
9 have established corresponding regimes to miti-
10 gate threats to financial stability or the econ-
11 omy posed by financial companies.

12 (e) DUE PROCESS.—

13 (1) NOTICE AND HEARING.—The Council shall
14 give notice to a financial holding company subject to
15 stricter standards, and opportunity for hearing if re-
16 quested, that the financial holding company subject
17 to stricter standards is being considered for mitiga-
18 tory action pursuant to subsection (a). The hearing
19 shall occur no later than 30 days after the financial
20 company receives notice of the proposed action from
21 the Council.

22 (2) NOTICE.—The Council shall notify the fi-
23 nancial holding company subject to stricter stand-
24 ards of the Council's determination, and, if the
25 Council determines that mitigatory action is appro-

1 piate, require the company to submit a plan to the
2 Council to implement the required mitigatory action.

3 (3) SUBMISSION OF PLAN.—The financial hold-
4 ing company subject to stricter standards shall sub-
5 mit its proposed plan to implement the required
6 mitigatory action or actions to the Council within 60
7 days from the date it receives notice under para-
8 graph (2) or such shorter timeframe as the Council
9 may require, if the Council determines an emergency
10 situation merits expeditious implementation.

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

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

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

24 (B) direct the Board to require a financial
25 holding company subject to stricter standards

1 to comply with the plan to implement mitiga-
2 tory action or actions within a reasonable time-
3 frame after the Council's approval and in ac-
4 cordance with such deadlines established in the
5 plan.

6 (f) TREASURY SECRETARY CONCURRENCE.—Mitiga-
7 tory action imposed by the Council involving the sale, di-
8 vestiture, or transfer of more than \$10,000,000,000 in
9 total assets by a financial holding company subject to
10 stricter standards shall require the Secretary of the Treas-
11 ury's concurrence before the issuance of the notice in sub-
12 section (e)(5)(A). If the sale, divestiture, or transfer of
13 total assets by a financial holding company subject to
14 stricter standards exceeds \$100,000,000,000, the Sec-
15 retary of the Treasury shall consult with the President be-
16 fore concurrence. The aforementioned amounts shall be in-
17 dexed to inflation.

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

24 (h) JUDICIAL REVIEW.—For any plan required under
25 this section, a financial holding company subject to strict-

1 er standards may, not later than 30 days after receipt of
2 the Council's notice under subsection (e)(2), bring an ac-
3 tion in the United States district court for the judicial dis-
4 trict in which the home office of such company is located,
5 or in the United States District Court for the District of
6 Columbia, for an order requiring that the requirement for
7 a mitigatory action be rescinded. Judicial review under
8 this section shall be limited to the imposition of a mitiga-
9 tory action pursuant to subsection (e)(5). In reviewing the
10 Council's imposition of a mitigatory action, the court shall
11 rescind or dismiss only those mitigatory actions it finds
12 to be imposed in an arbitrary and capricious manner.

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

18 **SEC. 127. SUBJECTING ACTIVITIES OR PRACTICES TO**
19 **STRICTER PRUDENTIAL STANDARDS FOR FI-**
20 **NANCIAL STABILITY PURPOSES.**

21 (a) **IN GENERAL.**—The Council may subject a finan-
22 cial activity or practice to stricter prudential standards
23 under this subtitle if the Council determines that the con-
24 duct, scope, nature, size, scale, concentration, or inter-
25 connectedness of such activity or practice could create or

1 increase the risk of significant liquidity, credit, or other
2 problems spreading among financial institutions or mar-
3 kets and local, minority, or underserved communities, and
4 thereby threaten the stability of the financial system or
5 economy.

6 (b) PERIODIC REVIEW OF ACTIVITY IDENTIFICA-
7 TIONS.—

8 (1) SUBMISSION OF ASSESSMENT.—The Board
9 shall periodically submit a report to the Council con-
10 taining an assessment of whether each activity or
11 practice subjected to stricter prudential standards
12 should continue to be subject to such standards.

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

15 (A) review the assessment submitted pur-
16 suant to paragraph (1) and any information or
17 recommendation submitted by members of the
18 Council regarding whether a financial activity
19 subjected to stricter prudential standards con-
20 tinues to merit stricter prudential standards;
21 and

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

1 (c) PROCEDURE FOR SUBJECTING OR CEASING TO
2 SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRU-
3 DENTIAL STANDARDS.—

4 (1) COUNCIL AND BOARD COORDINATION.—The
5 Council shall inform the Board if the Council is con-
6 sidering whether to subject or cease to subject an
7 activity to stricter prudential standards in accord-
8 ance with this section.

9 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
10 ATION OF WRITTEN MATERIALS.—

11 (A) IN GENERAL.—The Board shall, in an
12 executive capacity on behalf of the Council, pro-
13 vide notice to financial companies that the
14 Council is considering whether to subject an ac-
15 tivity or practice to heightened prudential regu-
16 lation, and shall provide a financial company
17 engaged in such activity or practice 30 days to
18 submit written materials to inform the Coun-
19 cil's decision. The Council shall decide, and the
20 Board shall provide notice of the Council's deci-
21 sion, within 60 days of the due date for such
22 written materials.

23 (B) EMERGENCY EXCEPTION.—The Coun-
24 cil may waive or modify the requirements of
25 subparagraph (A) if the Council determines

1 that such waiver or modification is necessary or
2 appropriate to prevent or mitigate threats posed
3 by an activity to financial stability. The Board
4 shall, in an executive capacity on behalf of the
5 Council, provide notice of such waiver or modi-
6 fication to financial companies as soon as prac-
7 ticable, which shall be no later than 24 hours
8 after the waiver or modification.

9 (3) FORM OF DECISION.—The Board shall pro-
10 vide all notices required under this subsection by
11 posting a notice on the Board’s web site and pub-
12 lishing a notice in the Federal Register.

13 **SEC. 128. STRICTER REGULATION OF ACTIVITIES AND**
14 **PRACTICES FOR FINANCIAL STABILITY PUR-**
15 **POSES.**

16 (a) PRUDENTIAL STANDARDS.—

17 (1) BOARD AUTHORITY TO RECOMMEND.—

18 (A) IN GENERAL.—To mitigate the risks to
19 United States financial stability and the United
20 States economy posed by financial activities and
21 practices that the Council identifies for stricter
22 prudential standards under section 127 the
23 Board, as agent of the Council, shall rec-
24 ommend prudential standards to the appro-

1 priate primary financial regulatory agencies to
2 apply to such identified activities and practices.

3 (B) CONSULTATION WITH PRIMARY FINAN-
4 CIAL REGULATORY AGENCIES.—The Board, in
5 developing recommendations under this sub-
6 section, shall consult with the relevant primary
7 financial regulatory agencies with respect to
8 any standard that is likely to have a significant
9 effect on entities described in section 101(b)(6).
10 With respect to any standard that is likely to
11 have a significant effect on insurance compa-
12 nies, the Board also shall consult with the Fed-
13 eral Insurance Office.

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

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

19 (B) may include prescribing the conduct of
20 the activity or practice in specific ways (such as
21 by limiting its scope, nature, size, scale, con-
22 centration, or interconnectedness, or applying
23 particular capital or risk-management require-
24 ments to the conduct of the activity) or prohib-
25 iting the activity or practice altogether.

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

9 (b) IMPLEMENTATION OF RECOMMENDED STAND-
10 ARDS.—

11 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
12 AGENCY.—Each primary financial regulatory agency
13 is authorized to impose, require reports regarding,
14 examine for compliance with, and enforce standards
15 in accordance with this section with respect to those
16 entities described in section 101(b)(6) for which it is
17 the primary financial regulatory agency. This au-
18 thority is in addition to and does not limit any other
19 authority of the primary financial regulatory agen-
20 cies. Compliance by an entity with actions taken by
21 a primary financial regulatory agency under this sec-
22 tion shall be enforceable in accordance with the stat-
23 utes governing the respective primary financial regu-
24 latory agency's jurisdiction over the entity as if the
25 agency action were taken under those statutes.

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

8 (3) PRIMARY FINANCIAL REGULATORY AGENCY
9 RESPONSE.—A primary financial regulatory agency
10 shall notify the Council and the Board in writing on
11 whether and to what extent the agency has imposed
12 the stricter prudential standards described in para-
13 graph (2) within 60 days of the Board’s rec-
14 ommendation. A primary financial regulatory agency
15 that fails to impose such standards shall provide
16 specific justification for such failure to act in the
17 written notice from the agency to the Council and
18 Board.

19 **SEC. 129. EFFECT OF RESCISSION OF IDENTIFICATION.**

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

1 (b) DETERMINATION OF PRIMARY FINANCIAL REGU-
2 LATORY AGENCY TO CONTINUE.—A primary financial
3 regulatory agency that has imposed stricter prudential
4 standards for financial stability purposes under this sub-
5 title shall determine whether standards that it has im-
6 posed under this subtitle should remain in effect.

7 **SEC. 130. EXAMINATIONS AND ENFORCEMENT ACTIONS**
8 **FOR INSURANCE AND RESOLUTIONS PUR-**
9 **POSES.**

10 (a) EXAMINATIONS FOR INSURANCE AND RESOLU-
11 TIONS PURPOSES.—Section 10(b)(3) of the Federal De-
12 posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended
13 by striking “whenever the Board of Directors determines”
14 and all that follows through the period and inserting “or
15 financial holding company subject to stricter standards (as
16 defined in section 101(b)(5) of the Financial Stability Im-
17 provement Act of 2010) whenever the Board of Directors
18 determines a special examination of any such depository
19 institution is necessary to determine the condition of such
20 depository institution for insurance or such financial hold-
21 ing company subject to stricter standards for resolution
22 purposes.”.

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

1 (1) in paragraph (2)—

2 (A) at the end of subparagraph (B), by
3 striking “or”;

4 (B) at the end of subparagraph (C), by
5 striking the period and inserting “; or”; and

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

8 “(D) the conduct or threatened conduct
9 (including any acts or omissions) of the deposi-
10 tory institution holding company poses a risk to
11 the Deposit Insurance Fund.”; and

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

14 “(6) For purposes of this subsection:

15 “(A) The Corporation shall have the same
16 powers with respect to a depository institution
17 holding company and its affiliates as the appro-
18 priate Federal banking agency has with respect
19 to the holding company and its affiliates; and

20 “(B) the holding company and its affiliates
21 shall have the same duties and obligations with
22 respect to the Corporation as the holding com-
23 pany and its affiliates have with respect to the
24 appropriate Federal banking agency.”.

1 **SEC. 131. STUDY OF THE EFFECTS OF SIZE AND COM-**
2 **PLEXITY OF FINANCIAL INSTITUTIONS ON**
3 **CAPITAL MARKET EFFICIENCY AND ECO-**
4 **NOMIC GROWTH.**

5 (a) STUDY REQUIRED.—The Chairman of the Coun-
6 cil shall carry out a study of the economic impact of pos-
7 sible financial services regulatory limitations intended to
8 reduce systemic risk. Such study shall estimate the effect
9 on the efficiency of capital markets, costs imposed on the
10 financial sector, and on national economic growth, of—

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

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

16 (3) requirements for operational separation be-
17 tween business units of large financial institutions in
18 order to expedite resolution in case of failure;

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

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

23 (6) limits on commingling of commercial and fi-
24 nancial activities by large financial institutions;

1 (7) segregation requirements between tradi-
2 tional financial activities and trading or other high-
3 risk operations in large financial institutions; and

4 (8) other limitations on the activities or struc-
5 ture of large financial institutions that may be use-
6 ful to limit systemic risk.

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

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

16 **SEC. 132. STRESS TESTS.**

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

19 (1) conduct quarterly stress tests; and

20 (2) submit a report on its quarterly stress test
21 to the head of the primary financial regulatory agen-
22 cy and to the Board at such time, in such form, and
23 containing such information as the head of the pri-
24 mary financial regulatory agency may require.

1 (b) A financial company that has more than
2 \$10,000,000,000 in total assets and is not a financial
3 holding company subject to stricter standards shall—

4 (1) conduct semiannual stress tests; and

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

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

12 (1) Baseline.

13 (2) Adverse.

14 (3) Severely adverse.

15 (d) The head of each primary financial regulatory
16 agency, in coordination with the Board, shall issue regula-
17 tions to define the term “stress test” for purposes of this
18 section.

19 **SEC. 133. CONTINGENT CAPITAL.**

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

1 (1) the Board determines that a specified finan-
2 cial company fails to meet prudential standards es-
3 tablished by the Board; or

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

7 (b) FACTORS TO CONSIDER.—In establishing regula-
8 tions under this section, the Board shall consider—

9 (1) an appropriate transition period for imple-
10 mentation of a conversion under this section;

11 (2) capital requirements applicable to the speci-
12 fied financial company and its subsidiaries; and

13 (3) any other factor that the Board deems ap-
14 propriate.

15 (c) STUDY REQUIRED.—The Chairman of the Coun-
16 cil shall carry out a study to determine an optimal imple-
17 mentation of contingent capital requirements to maximize
18 financial stability, minimize the probability of drawing on
19 the Orderly Liquidation Fund established under section
20 210(n) in a financial crisis, and minimize costs for finan-
21 cial holding companies subject to stricter standards. To
22 the extent practicable, the study shall take place with
23 input from industry participants and international finan-
24 cial regulators. Such study shall include—

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

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

9 (3) an estimate of the costs of carrying contin-
10 gent capital;

11 (4) an estimate of the effectiveness of contin-
12 gent capital requirements in reducing losses to the
13 systemic resolution fund in cases of single-firm or
14 systemic failure; and

15 (5) recommendations for implementing legisla-
16 tion.

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

1 **SEC. 134. RESTRICTION ON PROPRIETARY TRADING BY**
2 **DESIGNATED FINANCIAL HOLDING COMPA-**
3 **NIES.**

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

10 (b) EXCEPTIONS PERMITTED.—The Board may ex-
11 empt from the prohibition of subsection (a) proprietary
12 trading that the Board determines to be ancillary to other
13 operations of such company and not to pose a threat to
14 the safety and soundness of such company or to the finan-
15 cial stability of the United States, including—

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

18 (2) hedging or managing risk;

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

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

23 (c) RULEMAKING AUTHORITY.—The primary finan-
24 cial regulatory agencies of banks and bank holding compa-
25 nies shall jointly issue regulations to carry out this section.

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

4 (e) PROPRIETARY TRADING DEFINED.—For pur-
5 poses of this section and with respect to a company, the
6 term “proprietary trading” means the trading of stocks,
7 bonds, options, commodities, derivatives, or other financial
8 instruments with the company’s own money and for the
9 company’s own account.

10 **SEC. 135. RULE OF CONSTRUCTION.**

11 (a) CONSTRUCTION.—The authorities granted to
12 agencies under this subtitle are in addition to any rule-
13 making, report-related, examination, enforcement, or
14 other authority that such agencies may have under other
15 law and in no way shall be construed to limit such other
16 authority, except that any standards imposed for financial
17 stability purposes under this subtitle shall supersede any
18 conflicting less stringent requirements of the primary fi-
19 nancial regulatory agency but only the extent of the con-
20 flict.

21 (b) AGENT RESPONSIBILITIES.—For purposes of this
22 subtitle, the term “agent” means the Board acting under
23 section 124(c) and coordinating with the Council in exer-
24 cising authority under sections 125 and 128.

1 **SEC. 136. ANTITRUST SAVINGS CLAUSE.**

2 Nothing in this subtitle shall be construed to modify,
3 impair, or supercede the operation of any of the antitrust
4 laws. For purposes of the preceding sentence, the term
5 “antitrust laws” has the meaning given such term in sub-
6 section (a) of the first section of the Clayton Act, except
7 that such term includes section 5 of the Federal Trade
8 Commission Act to the extent that such section relates to
9 unfair methods of competition.

10 **Subtitle C—International Policy**
11 **Coordination**

12 **SEC. 141. INTERNATIONAL POLICY COORDINATION.**

13 The President of the United States, or a designee of
14 the President, shall coordinate through all available inter-
15 national policy channels similar policies as found in United
16 States law related to limiting the scope, nature, size, scale,
17 concentration, and interconnectedness of financial compa-
18 nies in order to protect financial stability and the global
19 economy.

20 **Subtitle D—Access by Foreign**
21 **Institutions**

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

24 (a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN
25 THE UNITED STATES.—Subsection 7(d)(3) of the Inter-

1 national Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is
2 amended—

3 (1) by striking “and” at the end of subpara-
4 graph (C);

5 (2) by striking the period at the end of sub-
6 paragraph (D) and inserting “; and”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(E) for a foreign bank that presents a
10 systemic risk to the United States, whether the
11 home country of the foreign bank has adopted,
12 or is making demonstrable progress toward
13 adopting, an appropriate system of financial
14 regulation for the financial system of such
15 home country to mitigate such systemic risk.”.

16 (b) TERMINATION OF FOREIGN BANK OFFICES IN
17 THE UNITED STATES.—Subsection 7(e)(1) of the Inter-
18 national Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is
19 amended—

20 (1) by striking “or” at the end of subparagraph
21 (A);

22 (2) by striking the period at the end of sub-
23 paragraph (B) and inserting “; or”; and

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

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

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

12 “(k) REGISTRATION OR SUCCESSION TO A UNITED
13 STATES BROKER OR DEALER.—In determining whether
14 to permit a foreign person or an affiliate of a foreign per-
15 son to register as a United States broker or dealer, or
16 succeed to the registration of a United States broker or
17 dealer, the Securities and Exchange Commission may con-
18 sider whether, for a foreign person, or an affiliate of a
19 foreign person that presents a systemic risk to the United
20 States, the home country of the foreign person has adopt-
21 ed or made demonstrable progress toward adopting an ap-
22 propriate system of financial regulation to mitigate such
23 systemic risk.

24 “(l) TERMINATION OF A UNITED STATES BROKER
25 OR DEALER.—For a foreign person or an affiliate of a

1 foreign person that presents such a systemic risk to the
2 United States, the Securities and Exchange Commission
3 may determine to terminate the registration of such for-
4 eign person or an affiliate of such foreign person as a
5 broker or dealer in the United States if the Commission
6 determines that the home country of the foreign person
7 has not adopted, or made demonstrable progress toward
8 adopting, an appropriate system of financial regulation to
9 mitigate such systemic risk.”.

Page 124, after line 2, insert the following:

10 **Subtitle E—Additional**
11 **Requirements**

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

12 (3) DEPOSITORY INSTITUTION HOLDING COM-
13 PANY.—The term “depository institution holding
14 company” has the meaning given such term under
15 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):

16 (3) INVESTMENTS IN FINANCIAL SUBSIDI-
17 ARIES.—For purposes of this section, investments in

1 financial subsidiaries that insured depository institu-
2 tions must deduct from regulatory capital under sec-
3 tion 5136A of the Revised Statutes or section
4 46(a)(2) of the Federal Deposit Insurance Act need
5 not be deducted from regulatory capital by deposi-
6 tory institution holding companies or nonbank finan-
7 cial companies identified under section 113, unless
8 such capital deduction is required by the Board of
9 Governors of the Federal Reserve System or the pri-
10 mary financial regulatory agency in the case of
11 nonbank financial companies identified under section
12 113.

13 (4) EFFECTIVE DATE AND PHASE-IN PERI-
14 ODS.—

15 (A) For debt or equity instruments issued
16 on or after May 19, 2010, by depository institu-
17 tion holding companies, or by nonbank financial
18 companies identified under section 113, this
19 section is effective as of May 19, 2010.

20 (B) In general, and other than as provided
21 for in paragraph (5), for debt or equity instru-
22 ments issued before May 19, 2010, by deposi-
23 tory institution holding companies, or by
24 nonbank financial companies identified under
25 section 113, any regulatory capital deductions

1 required under this section will be phased in in-
2 crementally over a period of three years, with
3 the phase-in period to begin on January 1,
4 2013, except in the situations described in sub-
5 paragraph (C).

6 (C) For any other depository institution
7 holding company that was not supervised by the
8 Board of Governors of the Federal Reserve Sys-
9 tem as of May 19, 2010, the requirements of
10 this section, except the requirements in sub-
11 paragraphs (A) and (B), shall be effective five
12 years from the date of the enactment of this
13 title.

14 (D) For bank holding company subsidi-
15 aries, organized under the laws of any State, of
16 foreign banking organizations that have relied
17 on Supervision and Regulation Letter SR-01-1
18 issued by the Board of Governors of the Fed-
19 eral Reserve System (as in effect on May 19,
20 2010), the requirements of this section, except
21 the requirements in subparagraph (A), shall be
22 effective five years from the date of the enact-
23 ment of this title.

24 (5) EXCEPTIONS.—This section shall not—

25 (A) apply to any Federal home loan bank;

1 (B) affect small bank holding companies
2 subject to the Small Bank Holding Company
3 Policy Statement of the Board of Governors of
4 the Federal Reserve System as in effect on May
5 19, 2010;

6 (C) affect the capital treatment of any
7 debt or equity security issued on or before May
8 19, 2010 for depository institution holding com-
9 panies with total consolidated assets of less
10 than \$15 billion as of the date of the enactment
11 of this title, and for organizations that were
12 mutual holding companies on May 19, 2010;

13 (D) be construed as preventing the appro-
14 priate Federal banking agency from amending
15 its capital adequacy guidelines or regulations in
16 a way that would affect the capital treatment of
17 any debt or equity security;

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

22 (i) the company is predominantly en-
23 gaged in insurance, investment company
24 activities, or asset management; and

1 (ii) the Board of Governors of the
2 Federal Reserve System determines that
3 risk-based capital requirements and lever-
4 age limits are not appropriate for such
5 company because of such company's activi-
6 ties (such as investment company activities
7 or asset management) or structure, pro-
8 vided that the Board of Governors of the
9 Federal Reserve System shall in such case
10 apply other standards that result in appro-
11 priately stringent controls.

