

ADDITIONAL TECHNICAL / MANAGERS
AMENDMENT

Page 19, strike lines 10 through 18 and insert the following:

- 1 (C) the Commodity Futures Trading Com-
2 mission, with respect to—
- 3 (i) any futures commission merchant
4 registered with the Commodity Futures
5 Trading Commission under the Commodity
6 Exchange Act (7 U.S.C. 1 et seq.);
- 7 (ii) any commodity pool operator or
8 commodity pool registered with the Com-
9 modity Futures Trading Commission
10 under the Commodity Exchange Act (7
11 U.S.C. 1 et seq.);
- 12 (iii) any commodity trading advisor or
13 introducing broker registered with the
14 Commodity Futures Trading Commission
15 under the Commodity Exchange Act (7
16 U.S.C. 1 et seq.) with respect to the advi-
17 sory activities of such entity and activities
18 incidental to such advisory activities;

1 (iv) any associated persons of a fu-
2 tures commission merchant, introducing
3 broker, commodity pool operator, or com-
4 modity trading advisor registered with the
5 Commodity Futures Trading Commission
6 under the Commodity Exchange Act (7
7 U.S.C. 1 et seq.);

8 (v) any derivatives clearing organiza-
9 tion registered with the Commodity Fu-
10 tures Trading Commission under the Com-
11 modity Exchange Act (7 U.S.C. 1 et seq.);

12 (vi) any board of trade designated as
13 a contract market by the Commodity Fu-
14 tures Trading Commission under the Com-
15 modity Exchange Act (7 U.S.C. 1 et seq);

16 (vii) any futures association registered
17 with the Commodity Futures Trading
18 Commission under the Commodity Ex-
19 change Act (7 U.S.C. 1 et seq.);

20 (viii) any retail foreign exchange deal-
21 er registered with the Commodity Futures
22 Trading Commission under the Commodity
23 Exchange Act (7 U.S.C. 1 et seq.);

24 (ix) any swap execution facility, swap
25 data repository, swap dealer, major swap

1 participant, or associated person of a swap
2 dealer or major swap participant registered
3 with the Commodity Futures Trading
4 Commission under the Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.) with re-
6 spect to the swap activities of the person
7 that requires such person to be registered
8 under such Act; and
9 (x) any registered entity under the
10 Commodity Exchange Act (7 U.S.C. 1 et
11 seq.);

Page 74, after line 18, insert the following new section:

12 **SEC. 123. STUDY OF THE EFFECTS OF SIZE AND COM-**
13 **PLEXITY OF FINANCIAL INSTITUTIONS ON**
14 **CAPITAL MARKET EFFICIENCY AND ECO-**
15 **NOMIC GROWTH.**

16 (a) STUDY REQUIRED.—The Chairman of the Coun-
17 cil shall carry out a study of the economic impact of pos-
18 sible financial services regulatory limitations intended to
19 reduce systemic risk. Such study shall estimate the effect
20 on the efficiency of capital markets, costs imposed on the
21 financial sector, and on national economic growth, of—

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

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

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

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

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

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

15 (7) segregation requirements between tradi-
16 tional financial activities and trading or other high-
17 risk operations in large financial institutions; and

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

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

1 (b) REPORT.—Not later than the end of the 180-day
2 period beginning on the date of the enactment of this title,
3 and no later than every 5 years thereafter, the Chairman
4 shall issue a report to the Congress containing any find-
5 ings and determinations made in carrying out the study
6 required under subsection (a).

Page 419, strike lines 3 through 5 and insert the
following:

7 (4) in section 308 (12 U.S.C. 1463 note)—

8 (A) in subsection (a), by striking “the Di-
9 rector of the Office of Thrift Supervision” and
10 inserting “the Chairman of the Board of Gov-
11 ernors of the Federal Reserve System, the
12 Comptroller of the Currency, the Chairman of
13 the National Credit Union Administration,
14 and”; and

15 (B) by adding at the end the following new
16 subsection:

17 “(c) REPORTS.—The Secretary of the Treasury, the
18 Chairman of the Board of Governors of the Federal Re-
19 serve System, the Comptroller of the Currency, the Chair-
20 man of the National Credit Union Administration, and the
21 Chairperson of Board of Directors of the Federal Deposit
22 Insurance Corporation shall each submit an annual report

1 to the Congress containing a description of actions taken
2 to carry out this section.”;

Page 423, strike lines 13 through 20, and insert the
following:

3 (F) by amending subsection (c), as so re-
4 designated, to read as follows:

5 “(c) ANNUAL REPORT REQUIRED.—The Comptroller
6 of the Currency shall make an annual report to the Con-
7 gress. Such report shall include a description of any
8 changes the Comptroller has made or is considering mak-
9 ing in the district offices of the Office, including a descrip-
10 tion of the geographic allocation of the Office’s resources
11 and personnel used to carry out the examination and su-
12 pervision functions of the Office.”;

Page 870, after line 23, insert the following new sec-
tion (and redesignate the subsequent section accordingly):

13 **SEC. 754. ADDITION OF SWAPS TO FUNCTIONALLY REGU-**
14 **LATED SUBSIDIARY DEFINITION.**

15 Section 5(c)(5)(B)(v) of the Bank Holding Company
16 Act of 1956 is amended by striking “commodities activi-
17 ties” each place it appears and inserting “commodities
18 and swap activities”.

Page 1338, after line 7, insert the following new subparagraph (and redesignate the subsequent subparagraph accordingly):

1 (I) The Bureau of Consumer Financial
2 Protection.

Page 1396, after line 2, insert the following new subsection:

3 (g) OFFICE OF FINANCIAL PROTECTION FOR OLDER
4 AMERICANS.—

5 (1) ESTABLISHMENT.—Before the end of the
6 180-day period beginning on the date of the enact-
7 ment of this title, the Director shall establish the Of-
8 fice of Financial Protection for Older Americans,
9 whose functions shall include activities designed to
10 facilitate the financial literacy of individuals who
11 have attained the age of 62 years or more (in this
12 subsection, referred to as “seniors”) on protection
13 from unfair and deceptive practices and on current
14 and future financial choices, including through the
15 dissemination of materials to seniors on such topics.

16 (2) DIRECTOR.—The Office of Financial Pro-
17 tection for Older Americans shall be headed by a di-
18 rector.

1 (3) DUTIES.—Such unit shall perform the fol-
2 lowing duties:

3 (A) Develop goals for programs that pro-
4 vide seniors financial literacy and counseling,
5 including programs that—

6 (i) help seniors recognize warning
7 signs of unfair and deceptive practices,
8 protect themselves from such practices;

9 (ii) provide one-on-one financial coun-
10 seling on issues including long-term sav-
11 ings and later-life economic security; and

12 (iii) provide personal consumer credit
13 advocacy to respond to consumer problems
14 caused by unfair and deceptive practices.

15 (B) Monitor certifications or designations
16 of financial advisors who advise seniors and
17 alert the Securities and Exchange Commission
18 and State regulators of certifications or des-
19 ignations that are identified as unfair or decep-
20 tive.

21 (C) Not later than 18 months after the
22 date of the establishment of the Office of Fi-
23 nancial Protection for Older Americans, submit
24 to Congress and the Securities and Exchange

1 Commission recommendations of the best prac-
2 tices for any legislative and regulatory—

3 (i) disseminating information regard-
4 ing the legitimacy of certifications of finan-
5 cial advisers who advise seniors;

6 (ii) methods in which a senior can
7 identify the financial advisor most appro-
8 priate for the senior's needs; and

9 (iii) methods in which a senior can
10 verify a financial advisor's credentials.

11 (D) Conduct research to identify best prac-
12 tices and effective methods, tools, technology
13 and strategies to educate and counsel seniors
14 about personal finance management with a
15 focus on—

16 (i) protecting themselves from unfair
17 and deceptive practices;

18 (ii) long-term savings; and

19 (iii) planning for retirement and long-
20 term care.

21 (E) Coordinate consumer protection efforts
22 of seniors with other Federal agencies and
23 State regulators, as appropriate, to promote
24 consistent, effective, and efficient enforcement.

1 (F) Work with community organizations,
2 non-profit organizations, and other entities that
3 are involved with educating or assisting seniors
4 (including the National Education and Re-
5 source Center on Women and Retirement Plan-
6 ning).

Page 1461, after line 4, insert the following new paragraph:

7 (3) STATE INSURANCE AUTHORITY UNDER
8 GRAMM-LEACH-BLILEY.—Notwithstanding para-
9 graph (2), the Bureau shall not exercise any authori-
10 ties that are granted a State insurance authority
11 under section 505(a)(6) of the Gramm-Leach-Bliley
12 Act with respect to a person regulated by a State in-
13 surance authority.

Page 1734, line 5, strike “and”.

Page 1734, after line 5, insert the following new paragraphs (and redesignate subsequent paragraphs accordingly):

14 (3) in paragraph (3)(A)(i), by inserting “or the
15 Federal Reserve banks” after “by the Board”;
16 (4) in paragraph (3)(A)(ii)—
17 (A) by inserting “or the Federal Reserve
18 banks” after “by the Board”; and

1 (B) by inserting “participating in or” after
2 “any entity”; and

Page 1772, line 9, strike “, as” and insert “,, as”.

Page 1773, after line 7, insert the following new section (and redesignate subsequent sections accordingly):

3 **SEC. 1303. AUTHORIZED ASSESSMENTS TO RECOUP ANY**
4 **TARP SHORTFALL.**

5 Section 134 of the Emergency Economic Stabilization
6 Act of 2008 is amended—

7 (1) by striking “Upon” and inserting the following:
8

9 “(a) IN GENERAL.—Upon”; and

10 (2) by adding at the end the following new subsection:
11

12 “(b) AUTHORIZED ASSESSMENTS.—

13 “(1) IN GENERAL.—The Federal Deposit Insurance
14 Corporation is authorized to make risk-based
15 assessments on financial companies in such amount
16 and manner and subject to such terms and conditions
17 as the Federal Deposit Insurance Corporation
18 determines, consistent with the processes established
19 under section 210(a) of the Restoring American Financial
20 Stability Act of 2010 and in consultation
21 with the Secretary and the Board of Governors of

1 the Federal Reserve System, necessary to recoup
2 any shortfall within the Troubled Asset Relief Pro-
3 gram that would add to the deficit or the national
4 debt, as identified by the Director of the Office of
5 Management and Budget, in consultation with the
6 Secretary.

7 “(2) FINANCIAL COMPANY DEFINED.—For pur-
8 poses of this subsection, the term ‘financial com-
9 pany’ shall have the meaning given such term under
10 section 201 of the Restoring American Financial
11 Stability Act of 2010.”.

Strike section 1502 and insert the following:

12 **SEC. 1502. CONFLICT MINERALS.**

13 (a) SENSE OF CONGRESS ON EXPLOITATION AND
14 TRADE OF CONFLICT MINERALS ORIGINATING IN THE
15 DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense
16 of Congress that the exploitation and trade of conflict min-
17 erals originating in the Democratic Republic of the Congo
18 is helping to finance conflict characterized by extreme lev-
19 els of violence in the eastern Democratic Republic of the
20 Congo, particularly sexual- and gender-based violence, and
21 contributing to an emergency humanitarian situation
22 therein, warranting the provisions of section 13(o) of the
23 Securities Exchange Act of 1934, as added by subsection
24 (b).

1 (b) DISCLOSURE RELATING TO CONFLICT MINERALS
2 ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE
3 CONGO.—Section 13 of the Securities Exchange Act of
4 1934 (15 U.S.C. 78m) is amended by adding at the end
5 the following new subsection:

6 “(o) DISCLOSURES RELATING TO CONFLICT MIN-
7 ERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF
8 THE CONGO.—

9 “(1) REGULATIONS.—

10 “(A) IN GENERAL.—Not later than 270
11 days after the date of the enactment of this
12 subsection, the Commission shall promulgate
13 regulations requiring any person described in
14 paragraph (2) to disclose annually, beginning
15 with the person’s first full fiscal year that be-
16 gins after the date of promulgation of such reg-
17 ulations, whether conflict minerals that are nec-
18 essary as described in paragraph (2)(B), in the
19 year for which such reporting is required, did or
20 did not originate in the Democratic Republic of
21 Congo or an adjoining country and, in cases in
22 which such conflict minerals did originate in
23 any such country, submit to the Commission a
24 report that includes, with respect to the period
25 covered by the report—

1 “(i) a description of the measures
2 taken by the person, which shall include an
3 independent private sector audit conducted
4 in accordance with standards established
5 by the Comptroller General of the United
6 States, in consultation with the Secretary
7 of State, to exercise due diligence on the
8 source and chain of custody of such min-
9 erals; and

10 “(ii) a description of the products
11 manufactured or contracted to be manu-
12 factured that are not conflict free, the enti-
13 ty that conducted the independent private
14 sector audit in accordance with clause (i),
15 the facilities used to process the conflict
16 minerals, the country of origin of the con-
17 flict minerals, and the efforts to determine
18 the mine or location of origin with the
19 greatest possible specificity.

20 “(B) CERTIFICATION.—The person sub-
21 mitting a report under subparagraph (A) shall
22 certify the audit described in clause (i) of such
23 subparagraph that is included in such report.
24 Such a certified audit shall constitute due dili-

1 gence in establishing the source and chain of
2 custody of such minerals.

3 “(C) UNRELIABLE DETERMINATION.—If a
4 report required to be submitted by a person
5 under subparagraph (A) relies on a determina-
6 tion of an independent private sector audit, as
7 described under subparagraph (A)(i), or other
8 due diligence processes determined by the Com-
9 mission to be unreliable, the report shall not
10 satisfy the requirements of the regulations pro-
11 mulgated under subparagraph (A)(i).

12 “(D) INFORMATION AVAILABLE TO THE
13 PUBLIC.—Each person described under para-
14 graph (2) shall make available to the public on
15 the Internet website of such person the infor-
16 mation disclosed by such person under subpara-
17 graph (A).

18 “(2) PERSON DESCRIBED.—A person is de-
19 scribed in this paragraph if—

20 “(A) the person is required to file reports
21 with the Commission pursuant to paragraph
22 (1)(A); and

23 “(B) conflict minerals are necessary to the
24 functionality or production of a product manu-
25 factured by such person.

1 “(3) REVISIONS AND WAIVERS.—The Commis-
2 sion shall revise or temporarily waive the require-
3 ments described in paragraph (1) if the President
4 transmits to the Commission a determination that—

5 “(A) such revision or waiver is in the na-
6 tional security interest of the United States and
7 the President includes the reasons therefor; and

8 “(B) establishes a date, not later than 2
9 years after the initial publication of such ex-
10 emption, on which such exemption shall expire.

11 “(4) TERMINATION OF DISCLOSURE REQUIRE-
12 MENTS.—The requirements of paragraph (1) shall
13 terminate on the date on which the President deter-
14 mines and certifies to the appropriate congressional
15 committees, but in no case earlier than the date that
16 is one day after the end of the five-year period be-
17 ginning on the date of the enactment of this sub-
18 section, that no armed groups continue to be directly
19 involved and benefitting from commercial activity in-
20 volving conflict minerals.

21 “(5) DEFINITIONS.—For purposes of this sub-
22 section, the terms ‘adjoining country’, ‘appropriate
23 congressional committees’, ‘armed group’, and ‘con-
24 flict mineral’ have the meaning given those terms

1 under section 1502 of the [Short Title of Financial
2 Reform Bill].”.

3 (c) STRATEGY AND MAP TO ADDRESS LINKAGES BE-
4 TWEEN CONFLICT MINERALS AND ARMED GROUPS.—

5 (1) STRATEGY.—

6 (A) IN GENERAL.—Not later than 180
7 days after the date of the enactment of this
8 Act, the Secretary of State, in consultation with
9 the Administrator of the United States Agency
10 for International Development, shall submit to
11 the appropriate congressional committees a
12 strategy to address the linkages between human
13 rights abuses, armed groups, mining of conflict
14 minerals, and commercial products.

15 (B) CONTENTS.—The strategy required by
16 subparagraph (A) shall include the following:

17 (i) A plan to promote peace and secu-
18 rity in the Democratic Republic of the
19 Congo by supporting efforts of the Govern-
20 ment of the Democratic Republic of the
21 Congo, including the Ministry of Mines
22 and other relevant agencies, adjoining
23 countries, and the international commu-
24 nity, in particular the United Nations

1 Group of Experts on the Democratic Re-
2 public of Congo, to—

3 (I) monitor and stop commercial
4 activities involving the natural re-
5 sources of the Democratic Republic of
6 the Congo that contribute to the ac-
7 tivities of armed groups and human
8 rights violations in the Democratic
9 Republic of the Congo; and

10 (II) develop stronger governance
11 and economic institutions that can fa-
12 cilitate and improve transparency in
13 the cross-border trade involving the
14 natural resources of the Democratic
15 Republic of the Congo to reduce ex-
16 ploitation by armed groups and pro-
17 mote local and regional development.

18 (ii) A plan to provide guidance to
19 commercial entities seeking to exercise due
20 diligence on and formalize the origin and
21 chain of custody of conflict minerals used
22 in their products and on their suppliers to
23 ensure that conflict minerals used in the
24 products of such suppliers do not directly

1 or indirectly finance armed conflict or re-
2 sult in labor or human rights violations.

3 (iii) A description of punitive meas-
4 ures that could be taken against individ-
5 uals or entities whose commercial activities
6 are supporting armed groups and human
7 rights violations in the Democratic Repub-
8 lic of the Congo.

9 (2) MAP.—

10 (A) IN GENERAL.—Not later than 180
11 days after the date of the enactment of this
12 Act, the Secretary of State shall, in accordance
13 with the recommendation of the United Nations
14 Group of Experts on the Democratic Republic
15 of the Congo in their December 2008 report—

16 (i) produce a map of mineral-rich
17 zones, trade routes, and areas under the
18 control of armed groups in the Democratic
19 Republic of the Congo and adjoining coun-
20 tries based on data from multiple sources,
21 including—

22 (I) the United Nations Group of
23 Experts on the Democratic Republic
24 of the Congo;

1 (II) the Government of the
2 Democratic Republic of the Congo,
3 the governments of adjoining coun-
4 tries, and the governments of other
5 Member States of the United Nations;
6 and

7 (III) local and international non-
8 governmental organizations;

9 (ii) make such map available to the
10 public; and

11 (iii) provide to the appropriate con-
12 gressional committees an explanatory note
13 describing the sources of information from
14 which such map is based and the identi-
15 fication, where possible, of the armed
16 groups or other forces in control of the
17 mines depicted.

18 (B) DESIGNATION.—The map required
19 under subparagraph (A) shall be known as the
20 “Conflict Minerals Map”, and mines located in
21 areas under the control of armed groups in the
22 Democratic Republic of the Congo and adjoin-
23 ing countries, as depicted on such Conflict Min-
24 erals Map, shall be known as “Conflict Zone
25 Mines”.

1 (C) UPDATES.—The Secretary of State
2 shall update the map required under subpara-
3 graph (A) not less frequently than once every
4 180 days until the date on which the disclosure
5 requirements under paragraph (1) of section
6 13(o) of the Securities Exchange Act of 1934,
7 as added by subsection (b), terminate in accord-
8 ance with the provisions of paragraph (4) of
9 such section 13(o).

10 (D) PUBLICATION IN FEDERAL REG-
11 ISTER.—The Secretary of State shall add min-
12 erals to the list of minerals in the definition of
13 conflict minerals under section 1305, as appro-
14 priate. The Secretary shall publish in the Fed-
15 eral Register notice of intent to declare a min-
16 eral as a conflict mineral included in such defi-
17 nition not later than one year before such dec-
18 laration.

19 (d) REPORTS.—

20 (1) BASELINE REPORT.—Not later than 1 year
21 after the date of the enactment of this Act and an-
22 nually thereafter until the termination of the disclo-
23 sure requirements under section 13(o) of the Securi-
24 ties Exchange Act of 1934, the Comptroller General
25 of the United States shall submit to appropriate con-

1 gressional committees a report that includes an as-
2 sessment of the rate of sexual- and gender-based vio-
3 lence in war-torn areas of the Democratic Republic
4 of the Congo and adjoining countries.

5 (2) REGULAR REPORT ON EFFECTIVENESS.—

6 Not later than 2 years after the date of the enact-
7 ment of this Act and annually thereafter, the Comp-
8 troller General of the United States shall submit to
9 the appropriate congressional committees a report
10 that includes the following:

11 (A) An assessment of the effectiveness of
12 section 13(o) of the Securities Exchange Act of
13 1934, as added by subsection (b), in promoting
14 peace and security in the Democratic Republic
15 of the Congo and adjoining countries.

16 (B) A description of issues encountered by
17 the Securities and Exchange Commission in
18 carrying out the provisions of such section
19 13(o).

20 (3) REPORT ON PRIVATE SECTOR AUDITING.—

21 Not later than 30 months after the date of the en-
22 actment of this Act and annually thereafter, the Sec-
23 retary of Commerce shall submit to the appropriate
24 congressional committees a report that includes the
25 following:

1 (A) An assessment of the accuracy of the
2 independent private sector audits and other due
3 diligence processes described under section
4 13(o) of the Securities Exchange Act of 1934.

5 (B) Recommendations for the processes
6 used to carry out such audits, including ways
7 to—

8 (i) improve the accuracy of such au-
9 dits; and

10 (ii) establish standards of best prac-
11 tices.

12 (C) A listing of all known conflict mineral
13 processing facilities worldwide.

14 (e) DEFINITIONS.—For purposes of this section:

15 (1) ADJOINING COUNTRY.—The term “adjoin-
16 ing country”, with respect to the Democratic Repub-
17 lic of the Congo, means a country that shares an
18 internationally recognized border with the Demo-
19 cratic Republic of the Congo.

20 (2) APPROPRIATE CONGRESSIONAL COMMIT-
21 TEES.—The term “appropriate congressional com-
22 mittees” means—

23 (A) the Committee on Appropriations, the
24 Committee on Foreign Affairs, the Committee
25 on Ways and Means, and the Committee on Fi-

1 nancial Services of the House of Representa-
2 tives; and

3 (B) the Committee on Appropriations, the
4 Committee on Foreign Relations, the Com-
5 mittee on Finance, and the Committee on
6 Banking, Housing, and Urban Affairs of the
7 Senate.

8 (3) ARMED GROUP.—The term “armed group”
9 means an armed group that is identified as perpetra-
10 tors of serious human rights abuses in the annual
11 Country Reports on Human Rights Practices under
12 sections 116(d) and 502B(b) of the Foreign Assist-
13 ance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b))
14 relating to the Democratic Republic of the Congo or
15 an adjoining country.

16 (4) CONFLICT MINERAL.—The term “conflict
17 mineral” means—

18 (A) columbite-tantalite (coltan), cassiterite,
19 gold, wolframite, or their derivatives; or

20 (B) any other mineral or its derivatives de-
21 termined by the Secretary of State to be financ-
22 ing conflict in the Democratic Republic of the
23 Congo or an adjoining country.

24 (5) UNDER THE CONTROL OF ARMED
25 GROUPS.—The term “under the control of armed

1 groups” means areas within the Democratic Repub-
2 lic of the Congo or adjoining countries in which
3 armed groups—

4 (A) physically control mines or force labor
5 of civilians to mine, transport, or sell conflict
6 minerals;

7 (B) tax, extort, or control any part of
8 trade routes for conflict minerals, including the
9 entire trade route from a Conflict Zone Mine to
10 the point of export from the Democratic Repub-
11 lic of the Congo or an adjoining country; or

12 (C) tax, extort, or control trading facilities,
13 in whole or in part, including the point of ex-
14 port from the Democratic Republic of the
15 Congo or an adjoining country.

Add at the end the following new sections:

16 **SEC. 1503. ELEVATION OF CERTAIN INSPECTORS GENERAL**
17 **TO APPOINTMENT PURSUANT TO SECTION 3**
18 **OF THE INSPECTOR GENERAL ACT OF 1978.**

19 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section
20 12 of the Inspector General Act of 1978 (5 U.S.C. App.)
21 is amended—

22 (1) in paragraph (1), by striking “or the Fed-
23 eral Cochairpersons of the Commissions established
24 under section 15301 of title 40, United States

1 Code;” and inserting “the Federal Cochairpersons of
2 the Commissions established under section 15301 of
3 title 40, United States Code; or the Chairman of the
4 Board of Governors of the Federal Reserve Sys-
5 tem;”; and

6 (2) in paragraph (2), by striking “or the Com-
7 missions established under section 15301 of title 40,
8 United States Code,” and inserting “the Commis-
9 sions established under section 15301 of title 40,
10 United States Code, or the Board of Governors of
11 the Federal Reserve System,”.

12 (b) EXCLUSION FROM DEFINITION OF DESIGNATED
13 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector
14 General Act of 1978 (5 U.S.C. App.) is amended by strik-
15 ing “the Board of Governors of the Federal Reserve Sys-
16 tem,”.

17 **SEC. 1504. CONTINUATION OF PROVISIONS RELATING TO**
18 **PERSONNEL.**

19 (a) IN GENERAL.—The Inspector General Act of
20 1978 (5 U.S.C. App.) is amended by inserting after sec-
21 tion 8L the following:

22 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
23 **TABLISHMENTS.**

24 **“(a) PROVISIONS RELATING TO THE BOARD OF GOV-**
25 **ERNORS OF THE FEDERAL RESERVE SYSTEM.—**

1 “(1) PROVISIONS RELATING TO INSPECTORS
2 GENERAL.—In the case of the Inspector General of
3 the Board of Governors of the Federal Reserve Sys-
4 tem, subsections (b) and (c) of section 4 of the In-
5 specter General Reform Act of 2008 (Public Law
6 110–409) shall apply in the same manner as if the
7 Board of Governors of the Federal Reserve System
8 were a designated Federal entity under section 8G.
9 An Inspector General who is subject to the preceding
10 sentence shall not be subject to section 3(e).

11 “(2) PROVISIONS RELATING TO OTHER PER-
12 SONNEL.—Notwithstanding paragraphs (7) and (8)
13 of section 6(a), the Inspector General of the Board
14 of Governors of the Federal Reserve System may se-
15 lect, appoint, and employ such officers and employ-
16 ees as may be necessary for carrying out the func-
17 tions, powers, and duties of the Office of Inspector
18 General and to obtain the temporary or intermittent
19 services of experts or consultants or an organization
20 of experts or consultants, subject to the applicable
21 laws and regulations that govern such selections, ap-
22 pointments, and employment, and the obtaining of
23 such services, within such establishment.

24 “(b) PROVISION RELATING TO THE BOARD OF GOV-
25 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-

visions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.”.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.

SEC. 1505. EFFECTIVE DATE; TRANSITION RULE.

(a) EFFECTIVE DATE.—The amendments made by sections 1503 and 1504 shall take effect 30 days after the date of the enactment of this Act.

(b) TRANSITION RULE.—An individual serving as Inspector General of the Board of Governors of the Federal Reserve System on the effective date of this section pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the

1 Federal Reserve System, consistent with the amend-
2 ments made by sections 1503 and 1504; and

3 (2) shall, while serving under paragraph (1), re-
4 main subject to the provisions of section 8G of such
5 Act which, immediately before the effective date of
6 this Act, applied with respect to the Inspector Gen-
7 eral of the Board of Governors of the Federal Re-
8 serve System, and suffer no reduction in pay.

9 **SEC. 1506. STUDY BY THE COMPTROLLER GENERAL.**

10 (a) IN GENERAL.—Not later than one year after the
11 date of enactment of this Act, the Comptroller General
12 of the United States shall issue a report assessing the rel-
13 ative independence of presidentially appointed inspectors
14 general and inspectors general of designated Federal enti-
15 ties, as such term is defined under section 8G of the In-
16 spector General Act of 1978, and the effects on independ-
17 ence of the amendments to the Inspector General Act of
18 1978 made by this Act.

19 (b) REPORT.—The report required by subsection (a)
20 shall be issued to the Committees on Financial Services
21 and Oversight and Government Reform of the House of
22 Representatives and the Committee on Banking, Housing,
23 and Urban Affairs and Homeland Security and Govern-
24 mental Affairs of the Senate.

1 **SEC. 1507. DEPOSIT RESTRICTED QUALIFIED TUITION PRO-**
2 **GRAMS.**

3 Section 18 of the Federal Deposit Insurance Act (12
4 U.S.C. 1828) is amended by adding at the end the fol-
5 lowing new subsection:

6 “(y) DEPOSIT RESTRICTED QUALIFIED TUITION
7 PROGRAMS.—

8 “(1) DEFINITIONS.—For purposes of this sub-
9 section, the following definitions shall apply:

10 “(A) DEPOSIT RESTRICTED QUALIFIED
11 TUITION PROGRAM.—The term ‘deposit re-
12 stricted qualified tuition program’ means a
13 qualified tuition program in which—

14 “(i) the cash provided by a contrib-
15 utor to such a qualified tuition program
16 may be invested only in deposits insured by
17 the Corporation;

18 “(ii) the contributor may become a
19 participant in the program by depositing
20 funds through the program into an account
21 at a depository institution participating in
22 the program; and

23 “(iii) the program may include mul-
24 tiple depository institutions, subject to the
25 requirements of section 529 of the Internal
26 Revenue Code of 1986, as amended.

1 “(B) QUALIFIED TUITION PROGRAM.—The
2 term ‘qualified tuition program’ has the same
3 meaning as in section 529 of the Internal Rev-
4 enue Code of 1986, as amended.

5 “(2) TREATMENT.—Notwithstanding any other
6 provision of the law, the following provisions shall
7 apply with respect to any deposit restricted qualified
8 tuition program:

9 “(A) A deposit restricted qualified tuition
10 program shall be deemed to be an ‘identified
11 banking product’ (as defined in Section 206 of
12 the Gramm-Leach-Bliley Act of 1999) for pur-
13 poses of the Securities Exchange Act of 1934.

14 “(B) None of the following shall be treated
15 as a security, as defined in section 2(a)(1) the
16 Securities Act of 1933, section 3(a)(10) of the
17 Securities Exchange Act of 1934, or section
18 2(a)(36) of the Investment Company Act of
19 1940:

20 “(i) The deposits of cash at an in-
21 sured depository institution relating to a
22 deposit restricted tuition program.

23 “(ii) Any certificate of deposit or
24 other instrument of an insured depository
25 institution evidencing any such deposit.

1 “(iii) The rights and obligations of
2 participants in a deposit restricted quali-
3 fied tuition program arising from section
4 529 of the Internal Revenue Code, as
5 amended.

6 “(C) In no event shall a deposit restricted
7 qualified tuition program, the State entity des-
8 ignated by statute to oversee such program, the
9 administrator appointed to operate the program
10 on behalf of the State or a participating deposi-
11 tory institution, be deemed to be an issuer of a
12 security or to be an investment company (as de-
13 fined in section 3(a) of the Investment Com-
14 pany Act of 1940).”.



HOUSE PROPOSED AMENDMENTS TO TITLE IV

Page 454, strike lines 10 and 11 and insert the following:

- 1 (4) in paragraph (6)—
2 (A) in subparagraph (A), by striking “or”;
3 (B) in subparagraph (B), by striking the
4 period at the end and adding “; or”; and
5 (C) by adding at the end the following new
6 subparagraph:
7 “(C) a private fund; or”; and

Page 459, insert after line 22 the following (and redesignate succeeding paragraphs accordingly):

- 8 (8) DISCLOSURE OF PRIVATE FUND INFORMATION.—An investment adviser registered under this
9 Act shall provide such reports, records, and other
10 documents to investors, prospective investors,
11 counterparties, and creditors, of any private fund
12 advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for
13 advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for
14 sion, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for
15 essary or appropriate in the public interest and for

1 the protection of investors or for the assessment of
2 systemic risk.

Page 463, line 6, strike “The” and insert “(1) The”.

Page 463, line 16, strike the closed quotation marks and following period and after such line insert the following (and redesignate succeeding sections and conform the table of contents accordingly):

3 “(2) Nothing in this Act shall relieve any per-
4 son of any obligation or duty, or affect the avail-
5 ability of any right or remedy available to the Com-
6 modity Futures Trading Commission or any private
7 party, arising under the Commodity Exchange Act
8 (7 U.S.C. 1 et seq.) governing commodity pools,
9 commodity pool operators, or commodity trading ad-
10 visors.”.

11 **SEC. 407. EXEMPTION OF AND REPORTING BY CERTAIN**
12 **PRIVATE FUND ADVISERS.**

13 Section 203 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b–3), as amended by section 5006, is further
15 amended by adding at the end the following new sub-
16 sections:

17 “(m) EXEMPTION OF AND REPORTING BY CERTAIN
18 PRIVATE FUND ADVISERS.—

1 “(1) IN GENERAL.—The Commission shall pro-
2 vide an exemption from the registration require-
3 ments under this section to any investment adviser
4 of private funds, if each of such investment adviser
5 acts solely as an adviser to private funds and has as-
6 sets under management in the United States of less
7 than \$150,000,000.

8 “(2) REPORTING.—The Commission shall re-
9 quire investment advisers exempted by reason of this
10 subsection to maintain such records and provide to
11 the Commission such annual or other reports as the
12 Commission determines necessary or appropriate in
13 the public interest or for the protection of investors.

14 “(n) REGISTRATION AND EXAMINATION OF MID-
15 SIZED PRIVATE FUND ADVISERS.—In prescribing regula-
16 tions to carry out the requirements of this section with
17 respect to investment advisers acting as investment advis-
18 ers to mid-sized private funds, the Commission shall take
19 into account the size, governance, and investment strategy
20 of such funds to determine whether they pose systemic
21 risk, and shall provide for registration and examination
22 procedures with respect to the investment advisers of such
23 funds which reflect the level of systemic risk posed by such
24 funds.”.

Page 463, line 17, insert “**AND REPORTING BY**”
after “**EXEMPTION OF**”.

Page 464, line 4, insert before the closed quotation
mark the following: “The Commission shall require such
advisers to maintain such records and provide to the
Commission such annual or other reports as the Commis-
sion determines necessary or appropriate in the public in-
terest or for the protection of investors.”.

Beginning on page 464, strike line 5 through page
465, line 6.

Page 466, strike lines 1 through 17 and insert the
following:

1 **SEC. 410. INVESTMENT ADVISERS SUBJECT TO STATE AU-**
2 **THORITIES.**

3 Section 203A(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b–3a(a)) is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

7 (2) by inserting after paragraph (1) the fol-
8 lowing new paragraph:

9 “(2) **TREATMENT OF CERTAIN MID-SIZED IN-**
10 **VESTMENT ADVISERS.**—Notwithstanding paragraph
11 (1), an investment adviser that is not exempt from
12 registration under section 203 and—

1 “(A) is regulated and examined, or re-
2 quired to be regulated and examined, in the
3 State where it maintains its principal office and
4 place of business; and

5 “(B) has assets under management be-
6 tween—

7 “(i) the amount specified under sub-
8 paragraph (A) of paragraph (1), as such
9 amount may have been adjusted by the
10 Commission pursuant to that subpara-
11 graph; and

12 “(ii) \$100,000,000, or such higher
13 amount as the Commission may, by rule,
14 deem appropriate in accordance with the
15 purposes of this title,

16 shall register with, and be subject to examina-
17 tion by, such State. The Commission shall pub-
18 lish a list of the States that regulate and exam-
19 ine, or require regulation and examination of,
20 investment advisers to which the requirements
21 of this paragraph apply. If no State in which an
22 investment adviser described in subparagraph
23 (B) is registered conducts such an examination,
24 the investment adviser must register with the
25 Commission. If, pursuant to this paragraph, an

1 investment adviser would be required to register
2 with 5 or more States, then the adviser may
3 maintain its registration with the Commis-
4 sion.”.

Page 466, strike lines 18 through 21 and insert the
following (and conform the table of contents accordingly):

5 SEC. 411. CUSTODIAL REQUIREMENTS.

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of the enactment of this title, the Securities and Ex-
8 change Commission shall adopt a rule pursuant to its au-
9 thority under section 211(a) of the Investment Advisers
10 Act of 1940 making it unlawful under section 206(4) of
11 that Act for an investment adviser registered under such
12 Act to have custody of funds or securities of a client, un-
13 less—

14 (1) the funds and securities are maintained
15 with a qualified custodian either in a separate ac-
16 count for each client under the client’s name, or in
17 accounts that contain only client funds and securi-
18 ties under the name of the investment adviser as
19 agent or trustee for the client; and

20 (2) the qualified custodian does not directly or
21 indirectly provide investment advice with respect to
22 such funds or securities.

1 (b) EXCEPTIONS.—The rule adopted under sub-
2 section (a) shall include such exceptions as the Commis-
3 sion determines in the public interest and consistent with
4 the protection of investors. Any exemption granted under
5 this subsection shall ensure that at least once per year,
6 a client described in subsection (a) shall receive a report
7 from an independent entity with a fiduciary responsibility
8 to the client to verify that the assets in the client’s account
9 are in accord with those stated on the client’s account
10 statement.

11 (c) NO LIMITS ON OTHER ACTIONS.—Nothing in this
12 section shall be construed to limit other actions the Securi-
13 ties and Exchange Commission may take under this Act
14 to require the protection of client assets.

Page 472, after line 3, insert the following new sec-
tion (and redesignate the succeeding section and conform
the table of contents accordingly):

15 **SEC. 416. QUALIFIED CLIENT STANDARD.**

16 Section 205(e) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–5(e)) is amended by adding at the
18 end the following: “With respect to any factor used in any
19 rule or regulation by the Commission in making a deter-
20 mination under this subsection, if the Commission uses
21 a dollar amount test in connection with such factor, such
22 as a net asset threshold, the Commission shall, by order,

1 not later than 1 year after the date of the enactment of
2 the Private Fund Investment Advisers Registration Act of
3 2009, and every 5 years thereafter, adjust for the effects
4 of inflation on such test. Any such adjustment that is not
5 a multiple of \$100,000 shall be rounded to the nearest
6 multiple of \$100,000.”.



TECHNICAL/MANAGER'S AMENDMENTS TO TITLE IV

Page 456, beginning on line 13, strike “a private fund” and insert “an investment adviser”.

Page 461, beginning on line 19, strike “includes—” and all that follows through line 22 and insert “includes sensitive, nonpublic information regarding—

- 1 (i) the investment or trading strate-
- 2 gies of the investment adviser;

Page 463, line 23, insert “that acts as an investment adviser solely to 1 or more venture capital funds” after “adviser”.



HOUSE PROPOSED AMENDMENTS TO SUBTITLE C OF TITLE IX

Page 1145, after line 11, insert the following (and redesignate succeeding paragraphs accordingly):

- 1 (1) in subsection (b)—
- 2 (A) in paragraph (1)(A), by striking “fur-
- 3 nished” and inserting “filed” and by striking
- 4 “furnishing” and inserting “filing”;
- 5 (B) in paragraph (1)(B), by striking “fur-
- 6 nishing” and inserting “filing”; and
- 7 (C) in the first sentence of paragraph (2),
- 8 by striking “furnish to” and inserting “file
- 9 with”;

Page 1147, after line 23, insert the following new subparagraph (and redesignate succeeding subparagraphs accordingly);

- 10 (C) in paragraph (2), by striking “fur-
- 11 nished to” and inserting “filed with”;

Page 1148, beginning on line 11, strike “redesignated,” and all that follows through line 12, and insert “redesignated—

- 1 (i) by striking “furnish” and inserting
2 “file”; and
3 (ii) by striking “or” at the end.

Page 1151, line 3, strike the closed quotation mark and following period and after such line insert the following:

- 4 “(4) LOOK-BACK REQUIREMENT.—
5 “(A) REVIEW BY THE NATIONALLY RECOG-
6 NIZED STATISTICAL RATING ORGANIZATION.—
7 Each nationally recognized statistical rating or-
8 ganization shall establish, maintain, and enforce
9 policies and procedures reasonably designed to
10 ensure that, in any case in which an employee
11 of a person subject to a credit rating of the na-
12 tionally recognized statistical rating organiza-
13 tion or the issuer, underwriter, or sponsor of a
14 security or money market instrument subject to
15 a credit rating of the nationally recognized sta-
16 tistical rating organization was employed by the
17 nationally recognized statistical rating organiza-
18 tion and participated in any capacity in deter-
19 mining credit ratings for the person or the se-
20 curities or money market instruments during
21 the 1-year period preceding the date an action
22 was taken with respect to the credit rating, the

1 nationally recognized statistical rating organiza-
2 tion shall—

3 “(i) conduct a review to determine
4 whether any conflicts of interest of the em-
5 ployee influenced the credit rating; and

6 “(ii) take action to revise the rating if
7 appropriate, in accordance with such rules
8 as the Commission shall prescribe.

9 “(B) REVIEW BY COMMISSION.—

10 “(i) IN GENERAL.—The Commission
11 shall conduct periodic reviews of the poli-
12 cies described in subparagraph (A) and the
13 implementation of the policies at each na-
14 tionally recognized statistical rating orga-
15 nization to ensure they are reasonably de-
16 signed and implemented to most effectively
17 eliminate conflicts of interest.

18 “(ii) TIMING OF REVIEWS.—The Com-
19 mission shall review the code of ethics and
20 conflict of interest policy of each nationally
21 recognized statistical rating organization—

22 “(I) not less frequently than an-
23 nually; and

24 “(II) whenever such policies are
25 materially modified or amended.

1 “(5) REPORT TO COMMISSION ON CERTAIN EM-
2 PLOYMENT TRANSITIONS.—

3 “(A) REPORT REQUIRED.—Each nationally
4 recognized statistical rating organization shall
5 report to the Commission any case such organi-
6 zation knows or can reasonably be expected to
7 know where a person associated with such orga-
8 nization within the previous 5 years obtains em-
9 ployment with any obligor, issuer, underwriter,
10 or sponsor of a security or money market in-
11 strument for which the organization issued a
12 credit rating during the 12-month period prior
13 to such employment, if such employee—

14 “(i) was a senior officer of such orga-
15 nization;

16 “(ii) participated in any capacity in
17 determining credit ratings for such obligor,
18 issuer, underwriter, or sponsor; or

19 “(iii) supervised an employee de-
20 scribed in clause (ii).

21 “(B) PUBLIC DISCLOSURE.—Upon receiv-
22 ing such a report, the Commission shall make
23 such information publicly available.”.

Page 1153, line 11, strike “and” and insert the fol-
lowing:

1 (5) in subsection (k), by striking “furnish to”
2 and inserting “file with”;

3 (6) in subsection (l)(2)(A)(i), by striking “fur-
4 nished” and inserting “filed”; and

Page 1153, line 12, strike “(5)” and insert “(7)”.

Page 1171, line 9, strike the closed quotation mark
and following period and insert after such line the fol-
lowing:

5 “(u) PROHIBITED ACTIVITIES.—Beginning 180 days
6 from the date of enactment of the Investor Protection and
7 Securities Reform Act of 2010, it shall be unlawful for
8 a nationally recognized statistical rating organization, or
9 an affiliate of a nationally recognized statistical rating or-
10 ganization, or any person associated with a nationally rec-
11 ognized statistical rating organization, that provides a
12 credit rating for an issuer, underwriter, or placement
13 agent of a security to provide any non-rating service to
14 that issuer, underwriter, or placement agent in deter-
15 mining a credit rating, including—

16 “(1) risk management advisory services;

17 “(2) advice or consultation relating to any
18 merger, sales, or disposition of assets of the issuer;

1 “(3) ancillary assistance, advice, or consulting
2 services unrelated to any specific credit rating
3 issuance; and

4 “(4) such further activities or services as the
5 Commission may determine as necessary or appro-
6 priate in the public interest or for the protection of
7 investors.”.

Page 1171, strike line 10 through page 1173, line
4, and insert the following:

8 **SEC. 933. STANDARDS FOR PRIVATE ACTIONS.**

9 (a) IN GENERAL.—Section 21D(b)(2) of the Securi-
10 ties Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2)) is
11 amended by inserting before the period at the end of the
12 following: “, and in the case of an action brought under
13 this title for money damages against a credit rating agen-
14 cy, it shall be sufficient for purposes of pleading any re-
15 quired state of mind for purposes of such action that the
16 complaint shall state with particularity facts giving rise
17 to a strong inference that the credit rating agency was
18 grossly negligent in violating the securities laws”.

19 (b) PLEADING STANDARD.—Section 15E(m) of the
20 Securities Exchange Act of 1934 (15 U.S.C. 78o–7(m))
21 amended to read as follows:

22 “(m) APPLICATION OF ENFORCEMENT PROVISIONS;
23 PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—

1 Statements made by credit rating agencies shall not be
2 deemed forward looking statements for purposes of section
3 21E. In any private right of action commenced against
4 a credit rating agency under the securities laws, the same
5 pleading standards with respect to gross negligence shall
6 apply to the credit rating agency as would apply to any
7 other person in the same private right of action against
8 such person.”.

9 (c) REQUIREMENTS FOR LIABILITY.—Section 21D of
10 the Securities Exchange Act of 1934 (15 U.S.C. 78u–4)
11 is amended—

12 (1) by redesignating subsections (c) through (f)
13 as subsections (d) through (g), respectively; and

14 (2) by inserting after subsection (b) the fol-
15 lowing:

16 “(c) REQUIREMENTS FOR LIABILITY.—A purchaser
17 of a security given a rating by a credit rating agency shall
18 have the right to recover for damages if the process of
19 determining the credit rating was—

20 “(1) grossly negligent, based on the facts and
21 circumstances at the time the rating was issued; and

22 “(2) a substantial factor in the economic loss
23 suffered by the investor.

24 No action shall be maintained to enforce any liability cre-
25 ated under this subsection unless brought within 2 years

1 after the discovery of the facts constituting the violation
2 and within 3 years after the initial issuance of the rat-
3 ing.”.

Page 1181, after line 17, insert the following new
sections (and redesignate succeeding sections and con-
form the table of contents accordingly):

4 **SEC. 939A. REVIEW OF RELIANCE ON RATINGS.**

5 (a) AGENCY REVIEW.—

6 (1) REVIEW.—Not later than 1 year after the
7 date of the enactment of this subtitle, each Federal
8 agency listed in paragraph (4) shall, to the extent
9 applicable, review—

10 (A) any regulation issued by such agency
11 that requires the use of an assessment of the
12 credit-worthiness of a security or money market
13 instrument; and

14 (B) any references to or requirements in
15 such regulations regarding credit ratings.

16 (2) MODIFICATIONS REQUIRED.—Each such
17 agency shall modify any such regulations identified
18 by the review conducted under paragraph (1) to re-
19 move any reference to or requirement of reliance on
20 credit ratings and to substitute in such regulations
21 such standard of credit-worthiness as each respective
22 agency shall determine as appropriate for such regu-

1 lations. In making such determination, such agencies
2 shall seek to establish, to the extent feasible, uni-
3 form standards of credit-worthiness for use by each
4 such agency, taking into account the entities regu-
5 lated by each such agency and the purposes for
6 which such entities would rely on such standards of
7 credit-worthiness.

8 (3) REPORT.—Upon conclusion of the review
9 required under paragraph (1), each Federal agency
10 listed in paragraph (4) shall transmit a report to
11 Congress containing a description of any modifica-
12 tion of any regulation such agency made pursuant to
13 paragraph (2).

14 (4) APPLICABLE AGENCIES.—The agencies re-
15 quired to conduct the review and report required by
16 this subsection are—

17 (A) the Securities and Exchange Commis-
18 sion;

19 (B) the Federal Deposit Insurance Cor-
20 poration;

21 (C) the Office of Thrift Supervision;

22 (D) the Office of the Comptroller of the
23 Currency;

24 (E) the Board of Governors of the Federal
25 Reserve;

1 (F) the National Credit Union Administra-
2 tion; and

3 (G) the Federal Housing Finance Agency.

4 (b) GAO REVIEW OF OTHER AGENCIES.—

5 (1) REVIEW.—The Comptroller General shall
6 conduct a comprehensive review of the use of credit
7 ratings by Federal agencies other than those listed
8 in subsection (a)(3), including an analysis of the
9 provisions of law or regulation applicable to each
10 such agency that refer to and require the use of
11 credit ratings by the agency, and the policies and
12 practices of each agency with respect to credit rat-
13 ings.

14 (2) REPORT.—Not later than 18 months after
15 the date of the enactment of this subtitle, the Comp-
16 troller General shall transmit to Congress a report
17 on the findings of the study conducted pursuant to
18 paragraph (1), including recommendations for any
19 legislation or rulemaking necessary or appropriate in
20 order for such agencies to reduce their reliance on
21 credit ratings.

22 **SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DIS-**
23 **CLOSURE RULE.**

24 Not later than 90 days after the date of enactment
25 of this subtitle, the Securities Exchange Commission shall

1 revise Regulation FD (17 C.F.R. 243.100) to remove from
2 such regulation the exemption for entities whose primary
3 business is the issuance of credit ratings (17 C.F.R.
4 243.100(b)(2)(iii)).

Page 1184, strike line 20 through page 1203, line
17, and insert the following (and conform the table of
contents accordingly):

5 **SEC. 939D. STUDY ON ASSIGNED CREDIT RATINGS.**

6 (a) STUDY.—The Securities and Exchange Commis-
7 sion shall undertake a study of the—

8 (1) ratings process for structured products and
9 the associated conflicts of interest in both the issuer-
10 pay and subscriber-pay models;

11 (2) feasibility of establishing a public or private
12 utility or self-regulatory agency that assigns nation-
13 ally recognized statistical ratings organizations to
14 determine the ratings of issuers and obligors of
15 structured products including—

16 (A) an assessment of potential mechanisms
17 for determining fees for the nationally recog-
18 nized statistical ratings organizations, if so as-
19 signed;

20 (B) appropriate methods for paying fees to
21 the assigned rating agencies;

1 (C) the extent to which the creation of
2 such a system would be viewed as creating
3 moral hazard on the part of the government;
4 and

5 (D) any constitutional and other issues
6 concerning the establishment of such a system;

7 (3) range of metrics by which to determine the
8 accuracy of ratings; and

9 (4) alternative means for compensating credit
10 rating agencies that would create incentives for ac-
11 curate credit ratings.

12 (b) REPORT AND RECOMMENDATION.—Not later
13 than 12 months after the date of enactment of this title,
14 the Securities and Exchange Commission shall submit to
15 Committee on Financial Services of the House of Rep-
16 resentatives and Committee on Banking, Housing and
17 Urban Development of the Senate, a report containing the
18 findings under the study required by subsection (a) and
19 any recommendations for either regulatory or statutory
20 changes that the Commission believes should be made to
21 implement the findings.

Page 1203, after line 17, insert the following new
section (and conform the table of contents accordingly):

1 **SEC. 6012. EFFECT OF RULE 436(G).**

2 Rule 436(g), promulgated by the Securities and Ex-
3 change Commission under the Securities Act of 1933,
4 shall have no force or effect.



TECHNICAL/MANAGER'S AMENDMENTS TO
SUBTITLE C OF TITLE IX

Page 1152, line 10, strike “; and” and insert a semicolon.

Page 1152, line 12, strike the period and insert “; and” and after such line insert the following:

1 “(C) COMPENSATION.—The compensation
2 of each compliance officer appointed under
3 paragraph (1) shall not be linked to the finan-
4 cial performance of the nationally recognized
5 statistical rating organization and shall be ar-
6 ranged so as to ensure the independence of the
7 officer’s judgment.”.

Page 1157, line 4, strike “subsection” and insert “section”.

Page 1157, line 7, strike “subsection” and insert “section”.

Page 1158, line 16, strike “; and” and insert a semicolon.

Page 1158, line 19, strike the period and insert “; and” and after such line insert the following:

1 “(F) each nationally recognized statistical
2 rating organization include an attestation with
3 any credit rating it issues affirming that no
4 part of the rating was influenced by any other
5 business activities, that the rating was based
6 solely on the merits of the instruments being
7 rated, and that such rating was an independent
8 evaluation of the risks and merits of the instru-
9 ment.”.

Page 1159, beginning on line 10, strike “or the senior” and all that follows through “organization” on line 11.

Page 1145, line 10, strike “Section” and insert “(a) IN GENERAL.—Section”.

Page 1171, after line 9, insert the following:

10 (b) CONFORMING AMENDMENT.—Section 3(a)(62) of
11 the Securities Exchange Act of 1934 (15 U.S.C.
12 78c(a)(62)) is amended by striking subparagraph (A) and
13 redesignating subparagraphs (B) and (C) as subpara-
14 graphs (A) and (B), respectively.



**** House Offer ****

Title: Title III

Matter: Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors

The House proposes the following amendments to the Base Text:

1. **Strike Senate provision** exempting the Office of the Comptroller of the Currency from the Federal Property and Administrative Services Act (Senate bill §319, Page 357, lines 10-23).
2. **Amend Senate provision** protecting employees from involuntary separation by increasing the protection period from 2 years to 3 years, extending the protection to OCC employees and clarifying pay-protection provisions (House bill § 1212, Page 163 line 17 – Page 164, line 20).
3. **Add House provision** requiring adoption of procedures and standards to ensure employee transfer requirements are met and to study implementation of such transfer requirements (House bill § 1212, Page 191, line 11 – Page 193, line 9).
4. **Add House provision** requiring an implementation plan and reporting requirements to ensure an orderly transfer of personnel and property from OTS (House bill §1220, Page 191-193).
5. **Add House provisions** enhancing Federal Deposit Insurance: elimination of pro-cyclical assessments; enhanced access to information for deposit insurance purposes; and transition reserve ratio requirement to reflect new assessment base (House bill §§ 1403-1405, Pages 308-310):
6. **Add provision** to insure noninterest bearing transaction accounts above standard FDIC limit, similar to current FDIC Transaction Account Guarantee Program (effectively makes permanent the TAG program).
7. **Add provision** to increase permanently FDIC and NCUSIF standard maximum deposit insurance amount to \$250,000 and make the increase retroactive to January 1, 2008.
8. **Add House provision** providing for Mutual National Bank and Federal Mutual Bank Holding Company Charters (House bill §1316, Pages 283-302).
9. **Amend base text provision** establishing the Office of Women and Minority Inclusion to: require the Director of the Office be a Senior Executive Service position; require the Director to coordinate technical assistance to minority-owned and women-owned businesses; require the assessment of the impact of the policies and regulations of each agency on minority-owned and women-owned businesses; and establish an Office of Women and Minority Inclusion in the Office of National Insurance (Senate bill § Page 384, line 20 – Page 390, line 16).

HOUSE PROPOSED AMENDMENTS TO TITLE III

[Page and line #s refer to Base text of proposed conference
report]

Page 357, strike line 10 and all that follows through
line 23.

Page 365, strike line 5 and all that follows through
line 22, and insert the following new paragraphs:

1 (1) 3-YEAR PROTECTION.—

2 (A) IN GENERAL.—Except as provided in
3 paragraph (2), each affected employee shall not,
4 during the 3-year period beginning on the
5 transfer date, be involuntarily separated, or in-
6 voluntarily reassigned outside his or her locality
7 pay area.

8 (B) AFFECTED EMPLOYEES.—For pur-
9 poses of this paragraph, the term “affected em-
10 ployee” means—

11 (i) an employee transferred from the
12 Office of Thrift Supervision holding a per-
13 manent position on the day before the
14 transfer date; and

15 (ii) an employee of the Office of the
16 Comptroller of the Currency holding a per-

1 manent position on the day before the
2 transfer date.

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

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

8 (B) terminate an appointment to a position
9 excepted from the competitive service because of
10 its confidential policy-making, policy-deter-
11 mining, or policy-advocating character.

Page 366, line 7, after the period add the following new sentence: “Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period will the reduced rate that would have applied but for the transfer.”.

Page 375, line 11, strike “and”.

Page 375, line 19, strike the period and insert a semicolon.

Page 375, after line 19, insert the following new paragraphs:

1 (3) shall, jointly with the Director of the Office
2 of Thrift Supervision, develop and adopt procedures
3 and safeguards designed to ensure that the require-
4 ments of this subsection are met; and

5 (4) shall conduct a study detailing the position
6 assignments of all employees transferred pursuant to
7 subsection (a), describing the procedures and safe-
8 guards adopted pursuant to paragraph (3), and
9 demonstrating that the requirements of this sub-
10 section have been met; and shall, not later than 365
11 days after the transfer date, submit a copy of such
12 study to Congress.

Page 381, after line 5, insert the following new section:

13 **SEC. 327. IMPLEMENTATION PLAN AND REPORTS.**

14 (a) **PLAN SUBMISSION.**—Within 90 days of the enact-
15 ment of the Restoring American Financial Stability Act
16 of 2010, the Secretary and the Corporation, in consulta-
17 tion with the Office of the Comptroller of the Currency
18 and the Office of Thrift Supervision, shall jointly submit
19 a plan to the Congress and the Inspectors General of the
20 Department of the Treasury and of the Corporation detail-

1 ing the steps the Secretary, the Corporation, the Office
2 of the Comptroller of the Currency, and the Office of
3 Thrift Supervision will take to implement the provisions
4 of sections 301 through 326, and the provisions of the
5 amendments made by such sections.

6 (b) INSPECTORS GENERAL REVIEW OF THE PLAN.—

7 Within 60 days of the date on which the Congress receives
8 the plan required under subsection (a), the Inspectors
9 General of the Department of the Treasury and of the
10 Corporation shall jointly provide a written report to the
11 Secretary and the Corporation and shall submit a copy
12 to the Congress detailing whether the plan conforms with
13 the intent of the provisions of sections 301 through 326,
14 and the provisions of the amendments made by such sec-
15 tions, including—

16 (1) whether the plan sufficiently takes into con-
17 sideration the orderly transfer of personnel;

18 (2) whether the plan describes procedures and
19 safeguards to ensure that the Office of Thrift Super-
20 vision employees are not unfairly disadvantaged rel-
21 ative to employees of the Office of the Comptroller
22 of the Currency and the Corporation;

23 (3) whether the plan sufficiently takes into con-
24 sideration the orderly transfer of authority and re-
25 sponsibilities;

1 (4) whether the plan sufficiently takes into con-
2 sideration the effective transfer of funds;

3 (5) whether the plan sufficiently takes in con-
4 sideration the orderly transfer of property; and

5 (6) any additional recommendations for an or-
6 derly and effective process.

7 (c) IMPLEMENTATION REPORTS.—Not later than 6
8 months after the date on which the Congress receives the
9 report required under subsection (b), and every 6 months
10 thereafter until all aspects of the plan have been imple-
11 mented, the Inspectors General of the Department of the
12 Treasury and the Corporation shall jointly provide a writ-
13 ten report on the status of the implementation of the plan
14 to the Secretary and the Corporation and shall submit a
15 copy to the Congress.

Page 382, after line 16, insert the following new sec-
tions (and redesignate the subsequent section accord-
ingly):

16 **SEC. 332. ELIMINATION OF PROCYCLICAL ASSESSMENTS.**

17 Section 7(e) of the Federal Deposit Insurance Act is
18 amended—

19 (1) in paragraph (2)—

20 (A) by amending subparagraph (B) to read
21 as follows:

1 “(B) LIMITATION.—The Board of Direc-
2 tors may, in its sole discretion, suspend or limit
3 the declaration of payment of dividends under
4 subparagraph (A).”;

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

7 “(C) NOTICE AND OPPORTUNITY FOR COM-
8 MENT.—The Corporation shall prescribe, by
9 regulation, after notice and opportunity for
10 comment, the method for the declaration, cal-
11 culation, distribution, and payment of dividends
12 under this paragraph”; and

13 (C) by striking subparagraphs (D) through
14 (G); and

15 (2) in paragraph (4)(A) by striking “para-
16 graphs (2)(D) and” and inserting “paragraphs (2)
17 and”.

18 **SEC. 333. ENHANCED ACCESS TO INFORMATION FOR DE-**
19 **POSIT INSURANCE PURPOSES.**

20 (a) Section 7(a)(2)(B) of the Federal Deposit Insur-
21 ance Act is amended by striking “, after agreement with
22 the Comptroller of the Currency, the Board of Governors
23 of the Federal Reserve System, and the Director of the
24 Office of Thrift Supervision, as appropriate,”.

1 (b) Section 7(b)(1)(E) of the Federal Deposit Insur-
2 ance Act is amended—

3 (1) in clause (i), by striking “such as” and in-
4 serting “including”; and

5 (2) by striking clause (iii).

6 **SEC. 334. TRANSITION RESERVE RATIO REQUIREMENTS TO**
7 **REFLECT NEW ASSESSMENT BASE.**

8 (a) Section 7(b)(3)(B) of the Federal Deposit Insur-
9 ance Act is amended to read as follows:

10 “(B) MINIMUM RESERVE RATIO.—The re-
11 serve ratio designated by the Board of Direc-
12 tors for any year may not be less than 1.15 per-
13 cent of estimated insured deposits, or the com-
14 parable percentage of the assessment base set
15 forth in paragraph (2)(C).”.

16 (b) Section 3(y)(3) of the Federal Deposit Insurance
17 Act is amended by inserting “, or such comparable per-
18 centage of the assessment base set forth in section
19 7(b)(2)(C)” before the period.

20 (c) For a period of not less than 5 years after the
21 date of the enactment of this title, the Federal Deposit
22 Insurance Corporation shall make available to the public
23 the reserve ratio and the designated reserve ratio using
24 both estimated insured deposits and the assessment base

1 under section 7(b)(2)(C) of the Federal Deposit Insurance
2 Act.

3 **SEC. 335. PERMANENT INCREASE IN DEPOSIT AND SHARE**
4 **INSURANCE.**

5 (a) PERMANENT INCREASE IN DEPOSIT INSUR-
6 ANCE.—Section 11(a)(1)(E) of the Federal Deposit Insur-
7 ance Act (12 U.S.C. 1821(a)(1)(E)) is amended—

8 (1) by striking “\$100,000” and inserting
9 “\$250,000”; and

10 (2) by adding at the end the following new sen-
11 tences: “Notwithstanding any other provision of law,
12 the increase in the standard maximum deposit insur-
13 ance amount to \$250,000 shall apply to depositors
14 in any institution for which the Corporation was ap-
15 pointed as receiver or conservator on or after Janu-
16 ary 1, 2008, and before October 3, 2008. The Cor-
17 poration shall take such actions as are necessary to
18 carry out the requirements of this section with re-
19 spect to such depositors, without regard to any time
20 limitations under this Act. In implementing this and
21 the preceding 2 sentences, any payment on a deposit
22 claim made by the Corporation as receiver or conser-
23 vator to a depositor above the standard maximum
24 deposit insurance amount in effect at the time of the
25 appointment of the Corporation as receiver or con-

1 servator shall be deemed to be part of the net
2 amount due to the depositor under subparagraph
3 (B).”

4 (b) PERMANENT INCREASE IN SHARE INSURANCE.—
5 Section 207(k)(5) of the Federal Credit Union Act (12
6 U.S.C. 1787(k)(5)) is amended by striking “\$100,000”
7 and inserting “\$250,000”.

8 (c) TECHNICAL AND CONFORMING AMENDMENT.—
9 Section 11(a)(1)(F)(i)(I) of the Federal Deposit Insurance
10 Act (12 U.S.C. 1821 (a)(1)(F)(i)(I)) is amended striking
11 “\$100,000” and inserting “\$250,000”.

12 **SEC. 336. PERMANENT EXTENSION OF THE TRANSACTION**
13 **ACCOUNT GUARANTY PROGRAM.**

14 (a) TAGP EXTENSION.—Section 11(a)(1) of the
15 Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is
16 amended—

17 (1) in subparagraph (B)—

18 (A) by striking “The net amount” and in-
19 serting the following:

20 “(i) IN GENERAL.—Subject to clause
21 (ii), the net amount”; and

22 (B) by adding at the end the following new
23 clauses:

24 “(ii) INSURANCE FOR NONINTEREST-
25 BEARING TRANSACTION ACCOUNTS.—Not-

1 withstanding clause (i), the Corporation
2 shall fully insure the net amount that any
3 depositor at an insured depository institu-
4 tion maintains in a noninterest-bearing
5 transaction account. Such amount shall
6 not be taken into account when computing
7 the net amount due to such depositor
8 under clause (i).

9 “(iii) NONINTEREST-BEARING TRANS-
10 ACTION ACCOUNT DEFINED.—For purposes
11 of this subparagraph, the term ‘non-
12 interest-bearing transaction account’
13 means a deposit or account maintained at
14 an insured depository institution—

15 “(I) with respect to which inter-
16 est is neither accrued nor paid;

17 “(II) on which the depositor or
18 account holder is permitted to make
19 withdrawals by negotiable or transfer-
20 able instrument, payment orders of
21 withdrawal, telephone or other elec-
22 tronic media transfers, or other simi-
23 lar items for the purpose of making
24 payments or transfers to third parties
25 or others; and

1 “(III) on which the insured de-
2 pository institution does not reserve
3 the right to require advance notice of
4 an intended withdrawal.”; and

5 (2) in subparagraph (C), by striking “subpara-
6 graph (B)” and inserting “subparagraph (B)(i)”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall take effect on December 31, 2010.

Page 383, after line 16, insert the following new sec-
tion (and redesignate subsequent sections accordingly):

9 **SEC. 341. MUTUAL NATIONAL BANKS AND FEDERAL MU-**
10 **TUAL BANK HOLDING COMPANIES AUTHOR-**
11 **IZED.**

12 (a) IN GENERAL.—Chapter one of title LXII of the
13 Revised Statutes of the United States (12 U.S.C. 21 et
14 seq.) is amended by inserting after section 5133 the fol-
15 lowing new sections:

16 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

17 “(a) IN GENERAL.—Notwithstanding the section des-
18 ignated the ‘Third’ of section 5134, in order to provide
19 mutual institutions for the deposit of funds, the extension
20 of credit, and provision of other services, the Comptroller
21 of the Currency may charter mutual national banks either
22 de novo or through a conversion of any insured depository
23 institution or any State mutual bank or credit union, sub-

1 ject to regulations prescribed by the Comptroller of the
2 Currency in accordance with this section. The powers con-
3 ferred by this section are intended to provide for the cre-
4 ation and maintenance of mutual national banks as bodies
5 corporate existing in perpetuity for the benefit of their de-
6 positors and the communities in which they operate.

7 “(b) REGULATIONS.—

8 “(1) REGULATIONS OF THE COMPTROLLER.—

9 The Comptroller of the Currency is authorized to
10 prescribe appropriate regulations for the organiza-
11 tion, incorporation, examination, operation, and reg-
12 ulation of mutual national banks. Except to the ex-
13 tent that such existing regulations conflict with sec-
14 tions 5133A and 5133B, mutual national banks
15 shall be subject to the regulations of the Director of
16 the Office of Thrift Supervision governing corporate
17 organization, governance, and conversion of mutual
18 institutions, as in effect on the date of the enact-
19 ment of the Restoring American Financial Stability
20 Act of 2010, including parts 543, 544, 546, 563b,
21 and 563c of chapter V of title 12, Code of Federal
22 Regulations (as in effect on that date), for up to 3
23 years beginning on the date of the enactment of the
24 Restoring American Financial Stability Act of 2010.

1 “(2) APPLICABILITY OF CAPITAL STOCK RE-
2 QUIREMENTS.—The Comptroller of the Currency
3 shall prescribe regulations regarding the manner in
4 which requirements of this title with respect to cap-
5 ital stock, and limitations imposed on national banks
6 under this title based on capital stock, shall apply to
7 mutual national banks.

8 “(c) CONVERSIONS.—

9 “(1) CONVERSION OF A MUTUAL DEPOSITORY
10 TO A MUTUAL NATIONAL BANK.—Subject to such
11 regulations as the Comptroller of the Currency may
12 prescribe for the protection of depositors’ rights and
13 for any other purpose the Comptroller of the Cur-
14 rency may consider appropriate, any mutual deposi-
15 tory may convert to a mutual national bank by filing
16 with the Comptroller of the Currency a notice of its
17 election to convert on a specified date that is not
18 earlier than 30 days after the date on which the no-
19 tice is filed, and the mutual depository shall be con-
20 verted to a mutual national bank charter on the date
21 specified in the notice.

22 “(2) CONVERSION TO STOCK NATIONAL
23 BANK.—Subject to such regulations as the Comp-
24 troller of the Currency may prescribe for the protec-
25 tion of depositors’ rights and for any other purpose

1 the Comptroller of the Currency may consider ap-
2 propriate, any national bank that is organized in the
3 mutual form under subsection (a) may reorganize as
4 a stock national bank.

5 “(3) CONVERSION TO STATE BANKS.—Any na-
6 tional mutual bank may convert to a State bank
7 charter in accordance with regulations prescribed by
8 the Comptroller of the Currency and applicable
9 State law.

10 “(d) TERMINATING MUTUALITY.—If a mutual na-
11 tional bank elects to terminate mutuality, it must do so
12 by—

13 “(1) liquidating; or

14 “(2) converting to a national banking associa-
15 tion operating in stock form.

16 “(e) STATUS AND RIGHTS OF MEMBERS.—

17 “(1) In general, the status of a member is pri-
18 marily that of a depositor and secondarily that of a
19 holder of a contingent right to participate in the eq-
20 uity of a mutual national bank upon a liquidation or
21 conversion.

22 “(2) Each member of a mutual national bank
23 shall have the following rights:

1 “(A) Such rights as may be agreed upon,
2 by contract, between the member and the mu-
3 tual national bank.

4 “(B) The right to vote for members of the
5 board of directors of the mutual national bank.

6 “(C) The right to attend any meeting of
7 members properly called by the board of direc-
8 tors of a mutual national bank.

9 “(D) In the event the board of directors,
10 in its sole discretion, determines a conversion of
11 a mutual national bank to a national banking
12 association operating in stock form is in the
13 best interests of the community in which the
14 bank operates and the members approve the
15 conversion through a special proxy, then the
16 members as of a record date set by the board
17 of directors shall have the first right to sub-
18 scribe for and purchase stock in the converted
19 bank.

20 “(E) In the event the board of directors, in
21 its sole discretion, determines a liquidation of
22 the mutual national bank is in the best inter-
23 ests of the community in which the bank oper-
24 ates and the members approve the liquidation,
25 or if for any other reason the bank is liquidated

1 by operation of law, then the members as of the
2 date of liquidation shall have the right to have
3 credited to their accounts, on a pro rata basis,
4 any residual assets left after the liquidation of
5 the mutual national bank.

6 “(3) In the consideration of all questions re-
7 quiring action by the members of a mutual national
8 bank, the bank may provide in its charter that each
9 member shall be permitted (i) one vote per member,
10 or (ii) to cast one vote for each \$100, or fraction
11 thereof, of the withdrawal value of the member’s ac-
12 count, but not more than 1,000 votes per member.

13 “(f) PROXIES.—

14 “(1) A member may give, in writing or elec-
15 tronically, a perpetual proxy to a committee of the
16 board of directors of a mutual depository, provided
17 that the member may revoke such a proxy in writing
18 or electronically, with such revocation to take effect
19 after 6 business days.

20 “(2) Such proxies may be used to vote on any
21 issue requiring approval of the members, including
22 the conversion of a mutual depository into a mutual
23 national bank and the reorganization of a mutual
24 national bank into a Federal mutual bank holding
25 company, except that, without a prior finding by the

1 regulator of the mutual national bank that such ac-
2 tion is needed to avoid loss to the Federal Deposit
3 Insurance Corporation's deposit insurance fund or to
4 protect the stability of the United States financial
5 system, such proxies may not be used to vote in
6 favor of—

7 “(A) terminating mutuality for a mutual
8 national bank or a Federal mutual bank holding
9 company;

10 “(B) permitting the modification of a Fed-
11 eral mutual bank holding company; or

12 “(C) issuing mutual capital certificates
13 (except when used to found a mutual national
14 bank or a Federal mutual bank holding com-
15 pany de novo).

16 “(3) Proxies given by a member, in writing or
17 electronically, to management of, or to a committee
18 of the board of directors of, a mutual depository
19 shall not be deemed to have been revoked solely be-
20 cause of, and shall continue to exist following, a con-
21 version to a mutual national bank and any concur-
22 rent or subsequent reorganization to a Federal mu-
23 tual bank holding company.

24 “(g) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 “(1) INSURED DEPOSITORY INSTITUTION.—The
2 term ‘insured depository institution’ has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act.

5 “(2) MUTUAL NATIONAL BANK.—The term
6 ‘mutual national bank’ means a national banking as-
7 sociation that operates in mutual form and is char-
8 tered by the Comptroller of the Currency under this
9 section.

10 “(3) MUTUAL DEPOSITORY.—The term ‘mutual
11 depository’ means a depository institution that is or-
12 ganized in non-stock form, including a Federal non-
13 stock depository and any form of non-stock depository
14 provided for under State law, the deposits of
15 which are insured by an instrumentality of the Fed-
16 eral Government.

17 “(4) MUTUALITY.—The term ‘mutuality’ means
18 the quality of being an insured depository institution
19 organized under a Federal or State law providing for
20 the organization of non-stock depository institutions,
21 or a holding company organized under a Federal or
22 State law providing for the organization of non-stock
23 entities that control one or more depository institu-
24 tions.

1 “(5) MEMBER.—The term ‘member’ means
2 each tax-liable depositor in a mutual depository’s
3 savings, demand, or other authorized depository ac-
4 counts and each tax-liable depositor in such an ac-
5 count in a depository subsidiary of a Federal mutual
6 bank holding company.

7 “(6) TAX LIABLE DEPOSITOR.—The term ‘tax
8 liable depositor’ means the single person responsible
9 for paying any Federal taxes due on any interest
10 paid on any deposits held within any savings, de-
11 mand, or other authorized depository account or ac-
12 counts with any mutual depository.

13 “(7) MEMBERSHIP RIGHTS.—The term ‘mem-
14 bership rights’ means the rights of each member
15 under this section.

16 “(h) CONFORMING REFERENCES.—Unless otherwise
17 provided by the Comptroller of the Currency—

18 “(1) any reference in any Federal law to a na-
19 tional bank operating in stock form, including a ref-
20 erence to the term ‘national banking association’,
21 ‘member bank’, ‘national bank’, ‘national associa-
22 tion’, ‘bank’, ‘insured bank’, ‘insured depository in-
23 stitution’, or ‘depository institution’, shall be deemed
24 to refer also to a mutual national bank;

1 “(2) any reference in any Federal law to the
2 term ‘board of directors’, ‘director’, or ‘directors’ of
3 a national bank operating in stock form shall be
4 deemed to refer also to the board of a mutual na-
5 tional bank; and

6 “(3) any terms in Federal law that may apply
7 only to a national bank operating in stock form, in-
8 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
9 ‘capital stock’, ‘common stock’, ‘stock certificate’,
10 ‘stock certificates’, ‘certificates representing shares
11 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
12 class of stock’, ‘cumulate such shares’, ‘par value’,
13 ‘preferred stock’ shall not apply to a mutual national
14 bank, unless the Comptroller of the Currency deter-
15 mines that the context requires otherwise.

16 **“SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPA-**
17 **NIES.**

18 “(a) REORGANIZATION OF MUTUAL NATIONAL BANK
19 AS A HOLDING COMPANY.—

20 “(1) IN GENERAL.—Subject to approval under
21 the Bank Holding Company Act of 1956, a mutual
22 national bank may reorganize so as to become a
23 Federal mutual bank holding company by submitting
24 a reorganization plan to the appropriate bank hold-
25 ing company regulator.

1 “(2) PLAN APPROVAL.—Upon the approval of
2 the reorganization plan by the appropriate bank
3 holding company regulator and the issuance of the
4 appropriate charters—

5 “(A) the substantial part of the mutual na-
6 tional bank’s assets and liabilities, including all
7 of the bank’s insured liabilities, shall be trans-
8 ferred to a national banking association, a ma-
9 jority of the shares of voting stock of which is
10 owned, directly or indirectly, by the mutual na-
11 tional bank that is to become a Federal mutual
12 bank holding company; and

13 “(B) the mutual national bank shall be-
14 come a Federal mutual bank holding company.

15 “(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’
16 APPROVAL OF PLAN REQUIRED.—This subsection does
17 not authorize a reorganization unless—

18 “(1) a majority of the mutual national bank’s
19 board of directors has approved the plan providing
20 for such reorganization; and

21 “(2) a majority of members has approved the
22 plan at a meeting held at the call of the directors
23 under the procedures prescribed by the bank’s char-
24 ter and bylaws.

1 “(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—

2 To avoid terminating mutuality, a Federal mutual bank
3 holding company must own, directly or indirectly, a major-
4 ity of the shares of voting stock of each of its depository
5 subsidiaries.

6 “(d) NO TERMINATION OF MUTUALITY.—Neither a
7 reorganization of a mutual depository nor a modification
8 of a Federal mutual bank holding company shall cause a
9 termination of mutuality.

10 “(e) RETENTION OF CAPITAL.—In connection with a
11 transaction described in subsection (a), a mutual national
12 bank may, subject to the approval of the appropriate bank
13 holding company regulator, retain capital at the holding
14 company level to the extent that the capital retained at
15 the holding company level exceeds the amount of capital
16 required for the national banking association chartered as
17 a part of a transaction described in subsection (a) to meet
18 all relevant capital standards established by the Comp-
19 troller of the Currency for national banking associations.

20 “(f) TERMINATING MUTUALITY.—If a Federal mu-
21 tual bank holding company elects to terminate mutuality,
22 it must do so by either liquidating or converting to a bank
23 holding company operating in stock form.

24 “(g) MEMBERSHIP RIGHTS.—Holders of savings, de-
25 mand, or other authorized depository accounts in a deposi-

1 tory subsidiary of a Federal mutual bank holding company
2 shall have the same membership rights with respect to the
3 Federal mutual bank holding company as those holders
4 would have had if the depository subsidiary of the Federal
5 mutual bank holding company had been a mutual national
6 bank.

7 “(h) REGULATION.—A Federal mutual bank holding
8 company shall be—

9 “(1) chartered by the appropriate bank holding
10 company regulator and shall be subject to such regu-
11 lations as the appropriate bank holding company
12 regulator shall prescribe; and

13 “(2) regulated under the Bank Holding Com-
14 pany Act of 1956 on the same terms and subject to
15 the same limitations as any other company that con-
16 trols a bank.

17 “(i) CAPITAL IMPROVEMENT.—

18 “(1) PLEDGE OF STOCK OF NATIONAL BANK
19 SUBSIDIARY.—This section shall not prohibit a Fed-
20 eral mutual bank holding company from pledging all
21 or a portion of the stock of the national banking as-
22 sociation chartered as part of a transaction de-
23 scribed in subsection (a) to raise capital for such na-
24 tional banking association.

1 “(2) ISSUANCE OF NONVOTING SHARES.—This
2 section shall not prohibit a national banking associa-
3 tion chartered as part of a transaction described in
4 subsection (a) from issuing any nonvoting shares or
5 less than 50 percent of the voting shares of such
6 bank to any person other than the Federal mutual
7 bank holding company.

8 “(j) INSOLVENCY AND LIQUIDATION.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, the appropriate bank holding com-
11 pany regulator may file a petition under chapter 7
12 of title 11, United States Code, with respect to a
13 Federal mutual bank holding company upon—

14 “(A) the default of any national bank—

15 “(i) the stock of which is owned by
16 the Federal mutual bank holding company;
17 and

18 “(ii) that was chartered in a trans-
19 action described in subsection (a); or

20 “(B) a foreclosure on a pledge by the Fed-
21 eral mutual bank holding company described in
22 subsection (i)(1).

23 “(2) DISTRIBUTION OF NET PROCEEDS.—Ex-
24 cept as provided in paragraph (3), the net proceeds
25 of any liquidation of any Federal mutual bank hold-

1 ing company under paragraph (1) shall be trans-
2 ferred to persons who hold membership interests in
3 such Federal mutual bank holding company.

4 “(3) RECOVERY BY FDIC.—If the Federal De-
5 posit Insurance Corporation incurs a loss as a result
6 of the default of any insured bank subsidiary of a
7 Federal mutual bank holding company that is liq-
8 uidated under paragraph (1), the Federal Deposit
9 Insurance Corporation shall succeed to the interests
10 of the depositors of the bank as members in the
11 Federal mutual bank holding company, to the extent
12 of the Federal Deposit Insurance Corporation’s loss.

13 “(k) DEFINITIONS.—

14 “(1) FEDERAL MUTUAL BANK HOLDING COM-
15 PANY.—The term ‘Federal mutual bank holding
16 company’ means a holding company that is orga-
17 nized in mutual form and owns, directly or indi-
18 rectly, a majority of the shares of voting stock of
19 one or more depository subsidiaries of a Federal mu-
20 tual bank holding company.

21 “(2) DEPOSITORY SUBSIDIARY OF A FEDERAL
22 MUTUAL BANK HOLDING COMPANY.—The term ‘de-
23 pository subsidiary of a Federal mutual bank hold-
24 ing company’ means a depository institution orga-
25 nized in stock form that is insured by the Federal

1 Deposit Insurance Corporation, the majority of the
2 shares of voting stock of which are owned by the
3 Federal mutual bank holding company or its wholly
4 owned subsidiaries and none of the shares of stock
5 of which are pledged or otherwise subjected to lien
6 except as permitted in subsection (i).

7 “(3) REORGANIZATION OF A MUTUAL DEPOSI-
8 TORY.—The term ‘reorganization of a mutual deposi-
9 tory’ means the conversion of a mutual depository
10 into a depository subsidiary of a Federal mutual
11 bank holding company.

12 “(4) MODIFICATION OF A FEDERAL MUTUAL
13 BANK HOLDING COMPANY.—The term ‘modification
14 of a Federal mutual bank holding company’ means
15 either: (A) the sale of shares of common or preferred
16 stock in a depository subsidiary of a Federal mutual
17 bank holding company to any party other than the
18 subsidiary’s parent Federal mutual bank holding
19 company or a wholly owned subsidiary of that par-
20 ent; or (B) the voluntary grant of a lien on shares
21 of common or preferred stock in a depository sub-
22 sidiary of a Federal mutual bank holding company.

23 “(5) DEFAULT.—With respect to a national
24 bank, the term ‘default’ means an adjudication or
25 other official determination by any court of com-

1 petent jurisdiction, the Comptroller of the Currency,
2 or other public authority pursuant to which a con-
3 servator, receiver, or other legal custodian is ap-
4 pointed for the national bank.

5 “(1) CONFORMING REFERENCES.—Unless otherwise
6 provided by the appropriate bank holding company regu-
7 lator—

8 “(1) any reference in any Federal law to a bank
9 holding company operating in stock form shall be
10 deemed to refer also to a Federal mutual bank hold-
11 ing company;

12 “(2) any reference in any Federal law to the
13 term ‘board of directors’, ‘director’, or ‘directors’ of
14 a national bank operating in stock form shall be
15 deemed to refer also to the board of a Federal mu-
16 tual bank holding company; and

17 “(3) any terms in Federal law that may apply
18 only to a national bank operating in stock form, in-
19 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
20 ‘capital stock’, ‘common stock’, ‘stock certificate’,
21 ‘stock certificates’, ‘certificates representing shares
22 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
23 class of stock’, ‘cumulate such shares’, ‘par value’,
24 ‘preferred stock’ shall not apply to a Federal mutual
25 bank holding company, unless the appropriate bank

1 holding company regulator determines that the con-
2 text requires otherwise.”.

3 (b) LIMITATION ON FEDERAL REGULATION OF
4 STATE BANKS.—Except as otherwise provided in Federal
5 law, the Comptroller of the Currency, the Board of Gov-
6 ernors of the Federal Reserve System, and the Federal
7 Deposit Insurance Corporation may not adopt or enforce
8 any regulation that contravenes the corporate governance
9 rules prescribed by State law or regulation for State banks
10 unless the Director, Board, or Corporation finds that the
11 Federal regulation is necessary to assure the safety and
12 soundness of the State banks.

13 (c) TECHNICAL AMENDMENT.—The table of sections
14 for chapter one of title LXII of the Revised Statutes of
15 the United States (12 U.S.C. 21 et seq.) is amended by
16 inserting after the item relating to section 5133 the fol-
17 lowing new items:

“5133A. Mutual national banks.

“5133B. Federal mutual bank holding companies.”.

18 (d) APPROPRIATE FEDERAL BANKING AGENCY FOR
19 FEDERAL MUTUAL BANK HOLDING COMPANIES.—Sec-
20 tion 3(q)(1) of the Federal Deposit Insurance Act (12
21 U.S.C. 1813(q)(2)) is amended by inserting after subpara-
22 graph (F) the following new subparagraph:

23 “(G) supervisory or regulatory proceedings
24 arising from the authority given to the appro-

1 priate bank holding company regulator under
2 section 5133B of the Revised Statutes of the
3 United States.”.

4 (e) MUTUAL HOLDING COMPANY CONVERSION.—

5 (1) IN GENERAL.—Any mutual holding com-
6 pany, including any form of mutual depository hold-
7 ing company provided for under State law, may con-
8 vert to a Federal mutual bank holding company by
9 filing with the appropriate bank holding company
10 regulator a notice of its election to convert on a
11 specified date that is not earlier than 30 days after
12 the date on which the notice is filed, and the mutual
13 holding company shall be converted to a Federal mu-
14 tual holding company charter on the date specified
15 in the notice.

16 (2) DEFINITIONS.—For purposes of this sub-
17 section, the following definitions shall apply:

18 (A) FEDERAL MUTUAL BANK HOLDING
19 COMPANY.—The term “Federal mutual bank
20 holding company” has the same meaning as in
21 section 5133B of the Revised Statutes of the
22 United States (as added by this section); and

23 (B) MUTUAL HOLDING COMPANY.—The
24 term “mutual holding company” has the same
25 meaning as in section 10(o)(10)(A) of the

1 Home Owners Loan Act as in effect on the day
2 before the date of enactment of this Act.

3 (f) EFFECTIVE DATE.—This section shall take effect
4 on the date of enactment of this Act.

Page 385, line 10, after the period insert the following new sentence: “The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code.”.

Page 385, line 18, insert “, including the coordination of technical assistance to such businesses” before the period.

Page 385, after line 20, insert the following new paragraph:

5 (3) OTHER DUTIES.—Each Director shall ad-
6 vise the agency administrator on the impact of the
7 policies and regulations of the agency on minority-
8 owned and women-owned businesses.

Page 390, line 15, strike “and” after the semicolon.

Page 390, line 16, strike the period and insert “; and”.

Page 390, after line 16, insert the following new subparagraph:

1

(J) the Office of National Insurance.



TECHNICAL / MANAGERS AMENDMENT TO TITLE

III

[Page and line #s refer to Base Text of Proposed Conference Report]

Page 343, strike line 5 and all that follows through line 8 and insert the following:

1 (c) CONFORMING AMENDMENTS.—Section 3 of the
2 Federal Deposit Insurance Act (12 U.S.C. 1813) is
3 amended—

4 (1) in subsection (q)—

Page 344, line 19, strike the 2nd period and insert “; and”.

Page 344, after line 19, insert the following new paragraph:

5 (2) in paragraphs (1) and (3) of subsection (u),
6 by striking “(other than a bank holding company”
7 and inserting “(other than a bank holding company
8 or savings and loan holding company”.

Page 353, line 2, insert “, unless modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, by any

court of competent jurisdiction, or by operation of law” before the period at the end.

Page 356, line 2, after “the” insert “supervisory and regulatory”.

Page 357, beginning on line 3, strike “, or as the Corporation determines is necessary or appropriate to carry out the responsibilities of the Corporation”.

Page 376, strike line 19, and all that follows through page 377, line 5, and insert the following new subsection:

1 (b) PROPERTY OF THE OFFICE OF THRIFT SUPER-
2 VISION.—

3 (1) IN GENERAL.—No later than 90 days after
4 the transfer date, all property of the Office of Thrift
5 Supervision (other than property described under
6 paragraph (b)(2)) that the Comptroller of the Cur-
7 rency and the Chairperson of the Corporation jointly
8 determine is used, on the day before the transfer
9 date, to perform or support the functions of the Of-
10 fice of Thrift Supervision transferred to the Office
11 of the Comptroller of the Currency or the Corpora-
12 tion under this title, shall be transferred to the Of-
13 fice of the Comptroller of the Currency or the Cor-

1 poration in a manner consistent with the transfer of
2 employees under this subtitle.

3 (2) PERSONAL PROPERTY.—All books, ac-
4 counts, records, reports, files, memoranda, papers,
5 documents, reports of examination, work papers, and
6 correspondence of the Office of Thrift Supervision
7 that the Comptroller of the Currency, the Chair-
8 person of the Corporation, and the Chairman of the
9 Board of Governors jointly determine is used, on the
10 day before the transfer date, to perform or support
11 the functions of the Office of Thrift Supervision
12 transferred to the Board of Governors under this
13 title shall be transferred to the Board of Governors
14 in a manner consistent with the purposes of this
15 title.

Page 386, line 1, insert “fair” before “inclusion”.

Page 386, line 6, strike “processes” and insert “pro-
cedures”.

Page 386, line 7, strike “for contract” and insert
“of contract”.

Page 386, line 9, insert “, to the extent consistent
with applicable law,” before “a component”.

Page 386, line 10, insert after the period the fol-
lowing: “Such procedure shall include a written state-

ment, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.”.

Page 386, line 14, strike “paragraph (1)” and insert “this subsection”.

Page 386, line 15, strike “that” and insert “whether”.

Page 386, line 16, after “contractor” insert the following: “and, as applicable, a subcontractor”.

Page 386, line 17, strike “the” and insert “their”.

Page 386, line 18, strike “of the contractor”.

Page 386, beginning on line 18, strike “Such procedure” and all that follows through the end of line 25.

Page 389, beginning on line 3, strike “, at all levels of” and all that follows through “Federal Government, which” on line 5, and insert “at all levels of the agency in a manner consistent with applicable law. Such steps”.

Page 391, strike line 19 and all that follows through page 392, line 4.

Page 396, after line 19, insert the following new subparagraph (and redesignate subsequent subparagraphs accordingly):

- 1 (A) by inserting after “an insured bank,”
2 the following: “a savings association,”;

Page 396, line 24, strike “and” after the semicolon.

Page 396, after line 24, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

- 3 (2) in section 1(b)(5), by striking “term ‘in-
4 sured depository institution’ has the same meaning
5 as in section 3(c)” and inserting “terms ‘depository
6 institution’ and ‘savings association’ have the same
7 meanings as in section 3”; and

Page 398, line 7, strike “noninsured” and insert “insured”.

Page 398, line 22, insert “and inserting ‘the Comptroller of the Currency’ before the semicolon at the end”.

Page 401, line 10, strike “1781” and insert “1751”.

Page 406, after line 2, insert the following new subparagraphs (and redesignate subsequent subparagraphs accordingly):

1 (B) in subsection (b)(3)—

2 (i) by inserting “any savings and loan
3 holding company and any subsidiary (other
4 than a depository institution) of a savings
5 and loan holding company (as such terms
6 are defined in section 10 of Home Owners’
7 Loan Act)), any noninsured State member
8 bank” after “Bank Holding Company Act
9 of 1956,”; and

10 (ii) by inserting “or against a savings
11 and loan holding company or any sub-
12 sidiary thereof (other than a depository in-
13 stitution or a subsidiary of such depository
14 institution)” before the period at the end;

15 (C) by striking paragraph (9) of subsection
16 (b) and inserting the following new paragraph:
17 “(9) [Repealed]”.

Page 406, line 22, strike “(C)” and insert “(D)”.

Page 406, after line 22, insert the following new
clause (and redesignate subsequent clauses accordingly):

18 (i) in paragraph (2), by striking “, or
19 as a savings association under subsection
20 (b)(9) of this section”;

Page 407, line 2, strike “period” and insert “comma”.

Page 407, line 8, insert “and the” after the opening quotation marks.

Page 408, strike line 16 and all that follows through line 24, and insert the following new subelause:

1 (III) by amending subparagraph
2 (B) to read as follows:
3 “(B) RECEIVER.—The Corporation may,
4 at the discretion of the Comptroller of the Cur-
5 rency, be appointed receiver and the Corpora-
6 tion may accept any such appointment.”.

Page 409, line 5, strike the semicolon after the opening quotation mark.

Page 410, strike line 14 and all that follows through line 17, and insert the following new clause:

7 (v) in paragraph (12)(B)—
8 (I) by inserting “as” after “shall
9 appoint the Corporation”;
10 (II) by striking “or the Director
11 of the Office of Thrift Supervision, as
12 appropriate,” each place such term
13 appears;

Page 411, line 22, insert “(1)” after “(g)” and strike “and” after the opening quotation marks.

Page 414, line 25, strike “and”.

Page 414, after line 25, insert the following (and redesignate the subsequent item accordingly):

- 1 (cc) by inserting a comma
- 2 after “soundness”; and

Page 415, line 12, strike “and”.

Page 416, line 20, strike the period and insert “; and”.

Page 416, after line 20, insert the following new paragraph:

- 3 (10) in section 33(e)—
- 4 (A) by inserting “and” after “Finance
- 5 Board,”; and
- 6 (B) by striking “and the Director of the
- 7 Office of Thrift Supervision”.

Page 423, line 4, after “as so redesignated,” insert “in the heading by striking ‘OF THE DIRECTOR’ and”.

Page 423, strike lines 11 and 12 and insert “by striking ‘Director’ and inserting ‘appropriate Federal banking agency’; and”.

Page 425, after line 24, insert the following new subparagraphs (and redesignate subsequent subparagraphs accordingly):

- 1 (A) in subsection (a), by striking “Direc-
- 2 tor”, each place such term appears and insert-
- 3 ing “appropriate Federal banking agency”;
- 4 (B) in subsection (b), by striking “Direc-
- 5 tor”, each place such term appears and insert-
- 6 ing “appropriate Federal banking agency”;

Page 426, strike lines 5 through 13 and insert the following:

- 7 (II) in subparagraph (B), by
- 8 striking “The Director” and inserting
- 9 “The appropriate Federal banking
- 10 agency”; and

Page 428, after line 4, insert the following new clause (and redesignate subsequent clauses accordingly):

- 11 (iii) in paragraph (3), in subpara-
- 12 graph (A), by striking “Director”, each
- 13 place such term appears, and inserting
- 14 “Comptroller”;

Page 428, line 7, strike “and”.

Page 428, line 9, strike the semicolon at the end and insert “; and”.

Page 428, after line 9, insert the following new sub-clause:

- 1 (III) by striking “Director” and
2 inserting “Comptroller”;

Page 429, after line 17, insert the following new subparagraph (and redesignate subsequent paragraphs accordingly):

- 3 (C) in subsection (e)(2), strike “Director”
4 and insert “Comptroller”;

Page 429, after line 18, insert the following new clause (and redesignate subsequent clauses accordingly):

- 5 (i) by striking “Director”, each place
6 such term appears, and inserting “Comp-
7 troller”;

Page 429, line 21, strike “and”.

Page 429, line 23, add “and” at the end.

Page 429, after line 23, insert the following new clause:

- 8 (iv) except as provided in clauses (i)
9 through (iii), by striking “Director” each

1 place such term appears and inserting
2 “Comptroller”;

Page 430, strike lines 1 through 3 and insert the following:

3 (D) in subsection (o)—
4 (i) in paragraph (1), by striking “Di-
5 rector” and inserting “Comptroller”; and
6 (ii) in paragraph (2)(B), by striking
7 “Director’s determination” and inserting
8 “determination of the Comptroller”;

Page 430 after line 3, insert the following new sub-
paragraph (and redesignate subsequent subparagraphs
accordingly):

9 (F) in subsections (m), (n), (o), and (p),
10 by striking “Director”, each place such term
11 appears, and inserting “Comptroller”;

Page 430, line 7, strike “and”.

Page 430, line 9, insert “and” after the semicolon.

Page 430, after line 9, insert the following new
clause:

- 1 (iii) by inserting “in consultation with
2 the Comptroller and the Corporation,” be-
3 fore considers;

Page 430, after line 9, insert the following new sub-
paragraph (and redesignate subsequent subparagraphs
accordingly):

- 4 (F) in subsection (r)(3), by striking “Di-
5 rector” each place such term appears and in-
6 serting “Board”;

Page 430, after line 10, insert the following new
clauses (and redesignate subsequent clauses accordingly):

- 7 (i) in paragraph (1), strike “Director”
8 and insert “appropriate Federal banking
9 agency”;
10 (ii) in paragraph (2), strike “Direc-
11 tor” and insert “appropriate Federal bank-
12 ing agency”;

Page 430, line 20, insert “by striking ‘Director’,
each place such term appears, and inserting ‘appropriate
Federal banking agency’ and” after “paragraph (5),”.

Page 430, line 24 strike “subparagraph” and insert
“subsection”.

Page 435, after line 6, insert the following new subparagraph (and redesignate subsequent subparagraphs accordingly):

1 (B) in subsection (b), by striking “Direc-
2 tor”, each place such term appears, and insert-
3 ing “Comptroller or Corporation, as appro-
4 priate”;

Page 438, after line 6, insert the following new subparagraphs (and redesignate subsequent subparagraphs accordingly):

5 (G) in subsection (p)—
6 (i) in paragraph (1)—
7 (I) by striking “Director deter-
8 mines” the 1st place such term ap-
9 pears and inserting “Board or the ap-
10 propriate Federal banking agency for
11 the savings association determines”;
12 (II) by striking “Director may”
13 and inserting “Board may”; and
14 (III) by striking “Director deter-
15 mines” the 2nd place such term ap-
16 pears and inserting “Board, in con-
17 sultation with the appropriate Federal

- 1 banking agency for the savings asso-
2 ciation determines”; and
3 (ii) in paragraph (2), by striking “Di-
4 rector”, each place such term appears, and
5 inserting “Board”;
6 (H) in subsection (q), by striking “Direc-
7 tor”, each place such term appears, and insert-
8 ing “Board”;
9 (I) in subsection (r), by striking “Direc-
10 tor”, each place such term appears, and insert-
11 ing “Board or appropriate Federal banking
12 agency”;

Page 438, line 21, strike “through (G)” and insert
“through (J)”.

Page 438, line 25, strike “and”.

Page 439, line 3, strike the period and insert “;
and”.

Page 439, after line 3, insert the following new
paragraph:

- 13 (11) in section 13 (12 U.S.C. 1468a) is amend-
14 ed by striking “Director” and inserting “a Federal
15 banking agency”.

Page 440, beginning on line 9, strike “and inserting
‘Comptroller of the Currency,’”.



FINANCIAL REFORM CONFERENCE:

HOUSE OFFER FOR TITLE V

{Page and line numbers refer to Conference Base Text}

Page 472, strike line 13 and 14 and insert the following:

1 **Subtitle A—Federal Insurance**
2 **Office**

Page 472, lines 16 and 17, strike “Office of National Insurance” and insert “Federal Insurance Office”.

Page 472, strike lines 18 and 19, and insert the following:

3 **SEC. 502. FEDERAL INSURANCE OFFICE.**

Page 473, strike line 3 and insert the following:

4 **“SEC. 313. FEDERAL INSURANCE OFFICE.”.**

Page 473, lines 5 and 6, strike “Office of National Insurance” and insert “Federal Insurance Office”.

Page 474, lines 24 and 25, strike “International Insurance Agreements on Prudential Matters” and insert “covered agreements (as such term is defined in subsection (r))”.

Page 475, lines 3 and 4, strike “International Insurance Agreements on Prudential Matters” and insert “covered agreements”.

Page 475, after line 15 insert the following:

1 “(3) ADVISORY CAPACITY ON COUNCIL.—The
2 Director shall serve in an advisory capacity on the
3 Financial Stability Oversight Council established
4 under the Financial Stability Act of 2010.”.

Page 475, lines 17 and 18, strike “as such insurance is determined by the Secretary” and insert “as determined by the Secretary in coordination with the Secretary of Health and Human Services”.

Page 477, strike lines 4 through 18 and insert the following:

5 “(4) ADVANCE COORDINATION.—Before col-
6 lecting any data or information under paragraph (2)
7 from an insurer, or affiliate of an insurer, the Office
8 shall coordinate with each relevant Federal agency
9 and State insurance regulator (or other relevant
10 Federal or State regulatory agency, if any, in the
11 case of an affiliate of an insurer) and any publicly
12 available sources to determine if the information to
13 be collected is available from, and may be obtained
14 in a timely manner by, such Federal agency or State

1 insurance regulator, individually or collectively, other
2 regulatory agency, or publicly available sources. If
3 the Director determines that such data or informa-
4 tion is available, and may be obtained in a timely
5 manner, from such an agency, regulator, regulatory
6 agency, or source, the Director shall obtain the data
7 or information from such agency, regulator, regu-
8 latory agency, or source. If the Director determines
9 that such data or information is not so available, the
10 Director may collect such data or information from
11 an insurer (or affiliate) only if the Director complies
12 with the requirements of subchapter I of chapter 35
13 of title 44, United States Code (relating to Federal
14 information policy; commonly known as the Paper-
15 work Reduction Act) in collecting such data or infor-
16 mation. Notwithstanding any other provision of law,
17 each such relevant Federal agency and State insur-
18 ance regulator or other Federal or State regulatory
19 agency is authorized to provide to the Office such
20 data or information.”.

Page 480, line 7, after “preempted” insert “pursu-
ant to this section or section 314”.

Page 480, lines 12 through 14, strike “an inter-
national insurance agreement on prudential measures”
and insert “a covered agreement”.

Page 480, lines 17 and 18, strike “International Insurance Agreements on Prudential Matters” and insert “covered agreements”.

Page 480, after line 25, insert the following new clause (and redesignate succeeding clauses accordingly):

1 “(ii) notify and consult with the
2 United States Trade Representative re-
3 garding any potential inconsistency or pre-
4 emption;”.

Page 481, lines 6 and 7, strike “International Insurance Agreements on Prudential Matters” and insert “covered agreements”.

Page 482, strike lines 3 through 7 and insert the following:

5 “(iii) notify the Committees on Finan-
6 cial Services and Ways and Means of the
7 House of Representatives and the Commit-
8 tees on Banking, Housing, and Urban Af-
9 fairs and Finance of the Senate.”.

Page 482, line 25, before the period insert the following: “, except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo”.

Page 484, strike lines 12 through 22 and insert the following new subsections (and redesignate succeeding subsections accordingly):

1 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
2 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
3 tion or section 314 shall be construed to limit the author-
4 ity of any Federal financial regulatory agency, including
5 the authority to develop and coordinate policy, negotiate,
6 and enter into agreements with foreign governments, au-
7 thorities, regulators, and multi-national regulatory com-
8 mittees and to preempt State measures to affect uni-
9 formity with international regulatory agreements.

10 “(m) RETENTION OF AUTHORITY OF UNITED
11 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
12 tion or section 314 shall be construed to affect the author-
13 ity of the Office of the United States Trade Representative
14 pursuant to section 141 of the Trade Act of 1974 (19
15 U.S.C. 2171) or any other provision of law, including au-
16 thority over the development and coordination of United
17 States international trade policy and the administration
18 of the United States trade agreements program.

19 “(n) ANNUAL REPORTS TO CONGRESS.—

20 “(1) SECTION 313(f) REPORTS.—Beginning
21 September 30, 2011, the Director shall submit a re-
22 port on or before September 30 of each calendar

1 year to the President and to the Committees on Fi-
2 nancial Services and Ways and Means of the House
3 of Representatives and the Committees on Banking,
4 Housing, and Urban Affairs and Finance of the
5 Senate on any actions taken by the Office pursuant
6 to subsection (f) (regarding preemption of incon-
7 sistent State insurance measures).

8 “(2) INSURANCE INDUSTRY.—Beginning Sep-
9 tember 30, 2011, the Director shall submit a report
10 on or before September 30 of each calendar year to
11 the President and to the Committee on Financial
12 Services of the House of Representatives and the
13 Committee on Banking, Housing, and Urban Affairs
14 of the Senate on the insurance industry and any
15 other information as deemed relevant by the Direc-
16 tor or requested by such Committees.

17 “(o) REPORTS ON U.S. AND GLOBAL REINSURANCE
18 MARKET.—The Director shall submit to the Committee
19 on Financial Services of the House of Representatives and
20 the Committee on Banking, Housing, and Urban Affairs
21 of the Senate—

22 “(1) a report received not later than September
23 30, 2012, describing the breadth and scope of the
24 global reinsurance market and the critical role such

1 market plays in supporting insurance in the United
2 States; and

3 “(2) a report received not later than January 1,
4 2013, and updated not later than January 1, 2015,
5 describing the impact of Subtitle B of the Non-Ad-
6 mitted and Reinsurance Reform Act of 2010 on the
7 ability of State regulators to access reinsurance in-
8 formation for regulated companies in their jurisdic-
9 tions.”.

Page 488, lines 3 and 4, strike “National Associa-
tion of Insurance Commissioners” and insert “State in-
surance regulators”.

Page 488, line 11, before the period insert “and the
Secretary shall dedicate specific personnel to the Office”.

Page 488, after line 17, insert the following new
paragraph (and redesignate succeeding paragraphs ac-
cordingly):

10 “(2) COVERED AGREEMENT.—The term ‘cov-
11 ered agreement’ means a written bilateral or multi-
12 lateral recognition agreement that—

13 “(A) is entered into between the United
14 States and one or more foreign governments,
15 authorities, or regulatory entities; and

1 “(B) provides for recognition of prudential
2 measures with respect to the business of insur-
3 ance or reinsurance that achieves a level of pro-
4 tection for insurance or reinsurance consumers
5 that is substantially equivalent to the level of
6 protection achieved under State insurance or re-
7 insurance regulation.”.

Strike line 21 on page 488 and all that follows
through page 489, line 3, and insert the following new
paragraph:

8 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
9 CY.—The term ‘Federal financial regulatory agency’
10 means the Department of the Treasury, the Board
11 of Governors of the Federal Reserve System, the Of-
12 fice of the Comptroller of the Currency, the Office
13 of Thrift Supervision, the Securities and Exchange
14 Commission, the Commodity Futures Trading Com-
15 mission, the Federal Deposit Insurance Corporation,
16 the Federal Housing Finance Agency, or the Na-
17 tional Credit Union Administration.”.

Page 489, lines 9 and 10, strike “Office of National
Insurance” and insert “Federal Insurance Office”.

Page 490, strike lines 6 through 24 and insert the
following:

1 **“SEC. 314. COVERED AGREEMENTS.**

2 “(a) AUTHORITY.—The Secretary and the United
3 States Trade Representative are authorized, jointly, to ne-
4 gotiate and enter into covered agreements on behalf of the
5 United States.

6 “(b) REQUIREMENTS FOR CONSULTATION WITH
7 CONGRESS.—

8 “(1) IN GENERAL.—Before initiating negotia-
9 tions to enter into a covered agreement under sub-
10 section (a), during such negotiations, and before en-
11 tering into any such agreement, the Secretary and
12 the United States Trade Representative shall jointly
13 consult with the Committee on Financial Services
14 and the Committee on Ways and Means of the
15 House of Representatives and the Committee on
16 Banking, Housing, and Urban Affairs and the Com-
17 mittee on Finance of the Senate.

18 “(2) SCOPE.—The consultation described in
19 paragraph (1) shall include consultation with respect
20 to—

21 “(A) the nature of the agreement;

22 “(B) how and to what extent the agree-
23 ment will achieve the applicable purposes, poli-
24 cies, priorities, and objectives of section 313
25 and this section; and

1 “(C) the implementation of the agreement,
2 including the general effect of the agreement on
3 existing State laws.

4 “(c) SUBMISSION AND LAYOVER PROVISIONS.—A
5 covered agreement under subsection (a) may enter into
6 force with respect to the United States only if—

7 “(1) the Secretary and the United States Trade
8 Representative jointly submit to the congressional
9 committees specified in subsection (b)(1), on a day
10 on which both Houses of Congress are in session, a
11 copy of the final legal text of the agreement; and

12 “(2) a period of 90 calendar days beginning on
13 the date on which the copy of the final legal text of
14 the agreement is submitted to the congressional
15 committees under paragraph (1) has expired.”.

Page 491, after line 16, in the item relating to section 313, strike “Office of National Insurance” and insert “Federal Insurance Office”.

Page 507, after line 8, insert the following:

16 (15) STATE.—The term “State” includes any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, Guam, the
19 Northern Mariana Islands, the Virgin Islands, and
20 American Samoa.

Page 510, after line 19, insert the following:

1 (5) STATE.—The term “State” includes any
2 State of the United States, the District of Columbia,
3 the Commonwealth of Puerto Rico, Guam, the
4 Northern Mariana Islands, the Virgin Islands, and
5 American Samoa.



ADDITIONAL PROPOSED AMENDMENTS TO TITLE IX

Strike section 913 and insert the following new sections (and redesignate succeeding sections and conform the table of contents accordingly):

1 **SEC. 913. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
2 **BROKERS, DEALERS, AND INVESTMENT AD-**
3 **VISERS, AND HARMONIZATION OF REGULA-**
4 **TION.**

5 (a) IN GENERAL.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
7 tion 15 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78o) is further amended by adding at the
9 end the following new subsections:

10 “(m) STANDARD OF CONDUCT.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of this Act or the Investment Advisers Act
13 of 1940, the Commission shall promulgate rules to
14 provide that, with respect to a broker or dealer,
15 when providing personalized investment advice about
16 securities to a retail customer (and such other cus-
17 tomers as the Commission may by rule provide), the

1 standard of conduct for such broker or dealer with
2 respect to such customer shall be the same as the
3 standard of conduct applicable to an investment ad-
4 viser under section 211 of the Investment Advisers
5 Act of 1940. The receipt of compensation based on
6 commission or other standard compensation for the
7 sale of securities shall not, in and of itself, be con-
8 sidered a violation of such standard applied to a
9 broker or dealer. Nothing in this section shall re-
10 quire a broker or dealer or registered representative
11 to have a continuing duty of care or loyalty to the
12 customer after providing personalized investment ad-
13 vice about securities.

14 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
15 FERED.—Where a broker or dealer sells only propri-
16 etary or other limited range of products, as deter-
17 mined by the Commission, the Commission shall by
18 rule require that such broker or dealer provide no-
19 tice to each retail customer and obtain the consent
20 or acknowledgment of the customer. The sale of only
21 proprietary or other limited range of products by a
22 broker or dealer shall not, in and of itself, be consid-
23 ered a violation of the standard set forth in para-
24 graph (1).

1 “(3) RETAIL CUSTOMER DEFINED.—For pur-
2 poses of this subsection, the term ‘retail customer’
3 means a natural person, or the legal representative
4 of such natural person, who—

5 “(A) receives personalized investment ad-
6 vice about securities from a broker or dealer;
7 and

8 “(B) uses such advice primarily for per-
9 sonal, family, or household purposes.

10 “(n) OTHER MATTERS.—The Commission shall—

11 “(1) facilitate the provision of simple and clear
12 disclosures to investors regarding the terms of their
13 relationships with brokers, dealers, and investment
14 advisers, including any material conflicts of interest;
15 and

16 “(2) examine and, where appropriate, promul-
17 gate rules prohibiting or restricting certain sales
18 practices, conflicts of interest, and compensation
19 schemes for brokers, dealers, and investment advis-
20 ers that the Commission deems contrary to the pub-
21 lic interest and the protection of investors.”.

22 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
23 tion 211 of the Investment Advisers Act of 1940, is
24 further amended by adding at the end the following
25 new subsections:

1 “(g) STANDARD OF CONDUCT.—

2 “(1) IN GENERAL.—The Commission shall pro-
3 mulgate rules to provide that the standard of con-
4 duct for all brokers, dealers, and investment advis-
5 ers, when providing personalized investment advice
6 about securities to retail customers (and such other
7 customers as the Commission may by rule provide),
8 shall be to act in the best interest of the customer
9 without regard to the financial or other interest of
10 the broker, dealer, or investment adviser providing
11 the advice. In accordance with such rules, any mate-
12 rial conflicts of interest shall be disclosed and may
13 be consented to by the customer. Such rules shall
14 provide that such standard of conduct shall be no
15 less stringent than the standard applicable to invest-
16 ment advisers under section 206(1) and (2) of this
17 Act when providing personalized investment advice
18 about securities, except the Commission shall not as-
19 cribe a meaning to the term ‘customer’ that would
20 include an investor in a private fund managed by an
21 investment adviser, where such private fund has en-
22 tered into an advisory contract with such adviser.
23 The receipt of compensation based on commission or
24 fees shall not, in and of itself, be considered a viola-

1 tion of such standard applied to a broker, dealer, or
2 investment adviser.

3 “(2) RETAIL CUSTOMER DEFINED.—For pur-
4 poses of this subsection, the term ‘retail customer’
5 means a natural person, or the legal representative
6 of such natural person, who—

7 “(A) receives personalized investment ad-
8 vice about securities from a broker, dealer, or
9 investment adviser; and

10 “(B) uses such advice primarily for per-
11 sonal, family, or household purposes.

12 “(h) OTHER MATTERS.—The Commission shall—

13 “(1) facilitate the provision of simple and clear
14 disclosures to investors regarding the terms of their
15 relationships with brokers, dealers, and investment
16 advisers, including any material conflicts of interest;
17 and

18 “(2) examine and, where appropriate, promul-
19 gate rules prohibiting or restricting certain sales
20 practices, conflicts of interest, and compensation
21 schemes for brokers, dealers, and investment advis-
22 ers that the Commission deems contrary to the pub-
23 lic interest and the protection of investors.”.

24 (b) HARMONIZATION OF ENFORCEMENT.—

1 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
2 tion 15 of the Securities Exchange Act of 1934, as
3 amended by subsection (a)(1), is further amended by
4 adding at the end the following new subsection:

5 “(o) HARMONIZATION OF ENFORCEMENT.—The en-
6 forcement authority of the Commission with respect to vio-
7 lations of the standard of conduct applicable to a broker
8 or dealer providing personalized investment advice about
9 securities to a retail customer shall include—

10 “(1) the enforcement authority of the Commis-
11 sion with respect to such violations provided under
12 this Act; and

13 “(2) the enforcement authority of the Commis-
14 sion with respect to violations of the standard of
15 conduct applicable to an investment advisor under
16 the Investment Advisers Act of 1940, including the
17 authority to impose sanctions for such violations,
18 and

19 the Commission shall seek to prosecute and sanction viola-
20 tors of the standard of conduct applicable to a broker or
21 dealer providing personalized investment advice about se-
22 curities to a retail customer under this Act to same extent
23 as the Commission prosecutes and sanctions violators of
24 the standard of conduct applicable to an investment advi-
25 sor under the Investment Advisers Act of 1940.”.

1 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
2 tion 211 of the Investment Advisers Act of 1940, as
3 amended by subsection (a)(2), is further amended by
4 adding at the end the following new subsection:

5 “(i) HARMONIZATION OF ENFORCEMENT.—The en-
6 forcement authority of the Commission with respect to vio-
7 lations of the standard of conduct applicable to an invest-
8 ment adviser shall include—

9 “(1) the enforcement authority of the Commis-
10 sion with respect to such violations provided under
11 this Act; and

12 “(2) the enforcement authority of the Commis-
13 sion with respect to violations of the standard of
14 conduct applicable to a broker or dealer providing
15 personalized investment advice about securities to a
16 retail customer under the Securities Exchange Act
17 of 1934, including the authority to impose sanctions
18 for such violations, and

19 the Commission shall seek to prosecute and sanction viola-
20 tors of the standard of conduct applicable to an invest-
21 ment advisor under this Act to same extent as the Com-
22 mission prosecutes and sanctions violators of the standard
23 of conduct applicable to a broker or dealer providing per-
24 sonalized investment advice about securities to a retail
25 customer under the Securities Exchange Act of 1934.”.

1 **SEC. 914. STUDY ON ENHANCING INVESTMENT ADVISER EX-**
2 **AMINATIONS.**

3 (a) STUDY REQUIRED.—

4 (1) IN GENERAL.—The Commission shall review
5 and analyze the need for enhanced examination and
6 enforcement resources for investment advisers.

7 (2) AREAS OF CONSIDERATION.—The study re-
8 quired by this subsection shall examine—

9 (A) the number and frequency of examina-
10 tions of investment advisers by the Commission
11 over the 5 years preceding the date of the en-
12 actment of this subtitle;

13 (B) the extent to which having Congress
14 authorize the Commission to designate one or
15 more self-regulatory organizations to augment
16 the Commission's efforts in overseeing invest-
17 ment advisers would improve the frequency of
18 examinations of investment advisers; and

19 (C) current and potential approaches to ex-
20 amining the investment advisory activities of
21 dually registered broker-dealers and investment
22 advisers or affiliated broker-dealers and invest-
23 ment advisers.

24 (b) REPORT REQUIRED.—The Commission shall re-
25 port its findings to the Committee on Financial Services
26 of the House of Representatives and the Committee on

1 Banking, Housing, and Urban Affairs of the Senate, not
2 later than 180 days after the date of enactment of this
3 subtitle, and shall use such findings to revise its rules and
4 regulations, as necessary. The report shall include a dis-
5 cussion of regulatory or legislative steps that are rec-
6 ommended or that may be necessary to address concerns
7 identified in the study.

Page 1061, beginning on line 15, strike “equal to the highest” and insert “comparable to the”.

Page 1061, beginning on line 16, strike “a Senior Executive Service position” and insert “other senior executive positions”.

Page 1067, line 10, insert “or disapprove” after “approve”.

Page 1068, line 6, insert “or disapprove” after “approve”.

Page 1068, line 7, insert “and instead institute proceedings to determine whether the proposed rule change should be disapproved,” after “subparagraph (A)”.

Page 1068, beginning on line 15, strike “after the date” and all that follows through the end of line 17 and insert “after the date of receipt of a proper filing.”.

Page 1068, beginning on line 22, strike “after the date” and all that follows through “paragraph (1)” and insert “after the date of receipt of a proper filing.”.

Page 1070, line 17, strike “the proposed rule change” and insert “or disapprove the proposed rule change,”.

Page 1070, line 18, insert a comma after “subparagraph (B)”.

Page 1075, line 1, strike “the Commission shall” and insert “the Commission may either, by order, disapprove the proposed rule change or”.

Page 1076, line 4, strike “shall” and insert “may either, by order, disapprove the proposed rule change or”.

Page 1089, line 13, strike “exclusively derived from” and insert “based on”.

Page 1090, line 7, insert “covered” after “with respect to any”.

Page 1090, beginning on line 13, strike “pursuant to subsection (a) that led to” and insert “that significantly contributed to”.

Page 1091, line 4, strike “led to” and insert “significantly contributed to”.

Page 1091, line 9, strike “action or related actions” and insert “covered judicial or administrative action”.

Page 1095, beginning on line 2, strike “determination made by” and all that follows through line 4, and insert “facts and circumstances set forth in the determination to ensure that the Commission did not grossly abuse its discretion. The Court shall not require the production or disclosure of any investigative or other non-public materials or records.”.

Page 1102, strike line 5 through page 1103, line 3, and insert the following (and redesignate succeeding subparagraphs accordingly):

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), the Commission
3 and any officer or employee of the Commission
4 shall not disclose any information, including in-
5 formation provided by a whistleblower to the
6 Commission, which could reasonably be ex-
7 pected to reveal the identity of a whistleblower,
8 except in accordance with the provisions of sec-
9 tion 552a of title 5, United States Code, unless
10 and until required to be disclosed to a defend-
11 ant or respondent in connection with a public
12 proceeding instituted by the Commission or any

1 entity described in subparagraph (C). For pur-
2 poses of section 552 of title 5, United States
3 Code, this paragraph shall be considered a stat-
4 ute described in subsection (b)(3)(B) of such
5 section.”.

Page 1135, beginning on line 2, strike “issues an
audit report, performs audit work, conducts interim re-
views, or”.

Page 1135, line 6, insert “issues an audit report,
performs audit work, or conducts interim reviews,” after
“review,”.

Page 1135, line 8, strike “its audit work papers”
and insert “the audit work papers of the foreign public
accounting firm”.

Page 1135, line 9, insert “of the firm” after “docu-
ments”.

Page 1135, line 11, insert “, upon request of the
Commission or the Board” after “Board”.

Page 1136, line 17, insert “any request by the Com-
mission or the Board under this section or upon whom
may be served” after “served”.

Page 1136, line 21, insert “performs material serv-
ices upon which a registered public accounting firm relies

in the conduct of an audit or interim review” after “that”.

Page 1136, line 22, insert “or,” after “work,”.

Page 1136, beginning on line 22, strike “or performs material” and all that follows through “interim review,” on line 25.

Page 1137, line 2, insert “any request by the Commission or the Board under this section or upon whom may be served” after “be served”.

Page 1137, beginning on line 4, strike “any request by the Commission or the Board under this section”.

Page 1142, line 1, insert “or recklessly” after “knowingly”.

Page 1142, line 14, insert “or recklessly” after “knowingly”.

Page 1143, line 3, insert “or recklessly” after “knowingly”.

Page 1143, after line 8, insert the following new sections (and conform the table of contents accordingly):

1 **SEC. 9290. AIDING AND ABETTING STANDARD OF KNOWL-**
2 **EDGE SATISFIED BY RECKLESSNESS.**

3 Section 20(e) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly”
5 after “knowingly”.

6 **SEC. 929P. STRENGTHENING ENFORCEMENT BY THE COM-**
7 **MISSION.**

8 (a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN
9 CEASE AND DESIST PROCEEDINGS.—

10 (1) UNDER THE SECURITIES ACT OF 1933.—

11 Section 8A of the Securities Act of 1933 (15 U.S.C.
12 77h–1) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

15 “(1) GROUNDS.—In any cease-and-desist pro-
16 ceeding under subsection (a), the Commission may
17 impose a civil penalty on a person if the Commission
18 finds, on the record, after notice and opportunity for
19 hearing, that—

20 “(A) such person—

21 “(i) is violating or has violated any
22 provision of this title, or any rule or regu-
23 lation issued under this title; or

24 “(ii) is or was a cause of the violation
25 of any provision of this title, or any rule or
26 regulation thereunder; and

1 “(B) such penalty is in the public interest.

2 “(2) MAXIMUM AMOUNT OF PENALTY.—

3 “(A) FIRST TIER.—The maximum amount
4 of a penalty for each act or omission described
5 in paragraph (1) shall be \$7,500 for a natural
6 person or \$75,000 for any other person.

7 “(B) SECOND TIER.—Notwithstanding
8 subparagraph (A), the maximum amount of
9 penalty for each such act or omission shall be
10 \$75,000 for a natural person or \$375,000 for
11 any other person, if the act or omission de-
12 scribed in paragraph (1) involved fraud, deceit,
13 manipulation, or deliberate or reckless dis-
14 regard of a regulatory requirement.

15 “(C) THIRD TIER.—Notwithstanding sub-
16 paragraphs (A) and (B), the maximum amount
17 of penalty for each such act or omission shall
18 be \$150,000 for a natural person or \$725,000
19 for any other person, if—

20 “(i) the act or omission described in
21 paragraph (1) involved fraud, deceit, ma-
22 nipulation, or deliberate or reckless dis-
23 regard of a regulatory requirement; and

24 “(ii) such act or omission directly or
25 indirectly resulted in—

1 “(I) substantial losses or created
2 a significant risk of substantial losses
3 to other persons; or

4 “(II) substantial pecuniary gain
5 to the person who committed the act
6 or omission.

7 “(3) EVIDENCE CONCERNING ABILITY TO
8 PAY.—In any proceeding in which the Commission
9 may impose a penalty under this section, a respond-
10 ent may present evidence of the ability of the re-
11 spondent to pay such penalty. The Commission may,
12 in its discretion, consider such evidence in deter-
13 mining whether such penalty is in the public inter-
14 est. Such evidence may relate to the extent of the
15 ability of the respondent to continue in business and
16 the collectability of a penalty, taking into account
17 any other claims of the United States or third par-
18 ties upon the assets of the respondent and the
19 amount of the assets of the respondent.”.

20 (2) UNDER THE SECURITIES EXCHANGE ACT
21 OF 1934.—Section 21B(a) of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78u–2(a)) is amend-
23 ed—

24 (A) by striking the matter following para-
25 graph (4);

1 (B) in the matter preceding paragraph (1),
2 by inserting after “opportunity for hearing,”
3 the following: “that such penalty is in the pub-
4 lic interest and”;

5 (C) by redesignating paragraphs (1)
6 through (4) as subparagraphs (A) through (D),
7 respectively, and adjusting the margins accord-
8 ingly;

9 (D) by striking “In any proceeding” and
10 inserting the following:

11 “(1) IN GENERAL.—In any proceeding”; and

12 (E) by adding at the end the following:

13 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
14 any proceeding instituted under section 21C against
15 any person, the Commission may impose a civil pen-
16 alty, if the Commission finds, on the record after no-
17 tice and opportunity for hearing, that such person—

18 “(A) is violating or has violated any provi-
19 sion of this title, or any rule or regulation
20 issued under this title; or

21 “(B) is or was a cause of the violation of
22 any provision of this title, or any rule or regula-
23 tion issued under this title.”.

1 (3) UNDER THE INVESTMENT COMPANY ACT OF
2 1940.—Section 9(d)(1) of the Investment Company
3 Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

4 (A) by striking the matter following sub-
5 paragraph (C);

6 (B) in the matter preceding subparagraph
7 (A), by inserting after “opportunity for hear-
8 ing,” the following: “that such penalty is in the
9 public interest, and”;

10 (C) by redesignating subparagraphs (A)
11 through (C) as clauses (i) through (iii), respec-
12 tively, and adjusting the margins accordingly;

13 (D) by striking “In any proceeding” and
14 inserting the following:

15 “(A) IN GENERAL.—In any proceeding”;
16 and

17 (E) by adding at the end the following:

18 “(B) CEASE-AND-DESIST PROCEEDINGS.—
19 In any proceeding instituted pursuant to sub-
20 section (f) against any person, the Commission
21 may impose a civil penalty if the Commission
22 finds, on the record, after notice and oppor-
23 tunity for hearing, that such person—

1 “(i) is violating or has violated any
2 provision of this title, or any rule or regu-
3 lation issued under this title; or

4 “(ii) is or was a cause of the violation
5 of any provision of this title, or any rule or
6 regulation issued under this title.”.

7 (4) UNDER THE INVESTMENT ADVISERS ACT OF
8 1940.—Section 203(i)(1) of the Investment Advisers
9 Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

10 (A) by striking the matter following sub-
11 paragraph (D);

12 (B) in the matter preceding subparagraph
13 (A), by inserting after “opportunity for hear-
14 ing,” the following: “that such penalty is in the
15 public interest and”;

16 (C) by redesignating subparagraphs (A)
17 through (D) as clauses (i) through (iv), respec-
18 tively, and adjusting the margins accordingly;

19 (D) by striking “In any proceeding” and
20 inserting the following:

21 “(A) IN GENERAL.—In any proceeding”;
22 and

23 (E) by adding at the end the following new
24 subparagraph:

1 “(B) CEASE-AND-DESIST PROCEEDINGS.—

2 In any proceeding instituted pursuant to sub-
3 section (k) against any person, the Commission
4 may impose a civil penalty if the Commission
5 finds, on the record, after notice and oppor-
6 tunity for hearing, that such person—

7 “(i) is violating or has violated any
8 provision of this title, or any rule or regu-
9 lation issued under this title; or

10 “(ii) is or was a cause of the violation
11 of any provision of this title, or any rule or
12 regulation issued under this title.”.

13 (b) EXTRATERRITORIAL JURISDICTION OF THE
14 ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES
15 LAWS.—

16 (1) UNDER THE SECURITIES ACT OF 1933.—
17 Section 22 of the Securities Act of 1933 (15 U.S.C.
18 77v(a)) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(c) EXTRATERRITORIAL JURISDICTION.—The dis-
21 trict courts of the United States and the United States
22 courts of any Territory shall have jurisdiction of an action
23 or proceeding brought or instituted by the Commission or
24 the United States alleging a violation of section 17(a) in-
25 volving—

1 “(1) conduct within the United States that con-
2 stitutes significant steps in furtherance of the viola-
3 tion, even if the securities transaction occurs outside
4 the United States and involves only foreign inves-
5 tors; or

6 “(2) conduct occurring outside the United
7 States that has a foreseeable substantial effect with-
8 in the United States.”.

9 (2) UNDER THE SECURITIES EXCHANGE ACT
10 OF 1934.—Section 27 of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78aa) is amended—

12 (A) by striking “The district” and insert-
13 ing the following:

14 “(a) IN GENERAL.—The district”; and

15 (B) by adding at the end the following new
16 subsection:

17 “(b) EXTRATERRITORIAL JURISDICTION.—The dis-
18 trict courts of the United States and the United States
19 courts of any Territory shall have jurisdiction of an action
20 or proceeding brought or instituted by the Commission or
21 the United States alleging a violation of the antifraud pro-
22 visions of this title involving—

23 “(1) conduct within the United States that con-
24 stitutes significant steps in furtherance of the viola-
25 tion, even if the securities transaction occurs outside

1 the United States and involves only foreign inves-
2 tors; or

3 “(2) conduct occurring outside the United
4 States that has a foreseeable substantial effect with-
5 in the United States.”.

6 (3) UNDER THE INVESTMENT ADVISERS ACT OF
7 1940.—Section 214 of the Investment Advisers Act
8 of 1940 (15 U.S.C. 80b–14) is amended—

9 (A) by striking “The district” and insert-
10 ing the following:

11 “(a) IN GENERAL.—The district”; and

12 (B) by adding at the end the following new
13 subsection:

14 “(b) EXTRATERRITORIAL JURISDICTION.—The dis-
15 trict courts of the United States and the United States
16 courts of any Territory shall have jurisdiction of an action
17 or proceeding brought or instituted by the Commission or
18 the United States alleging a violation of section 206 in-
19 volving—

20 “(1) conduct within the United States that con-
21 stitutes significant steps in furtherance of the viola-
22 tion, even if the violation is committed by a foreign
23 adviser and involves only foreign investors; or

1 “(2) conduct occurring outside the United
2 States that has a foreseeable substantial effect with-
3 in the United States.”.

4 (c) CONTROL PERSON LIABILITY UNDER THE SECU-
5 RITIES EXCHANGE ACT OF 1934.—Section 20(a) of the
6 Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is
7 amended by inserting after “controlled person is liable”
8 the following: “(including to the Commission in any action
9 brought under paragraph (1) or (3) of section 21(d))”.

10 **SEC. 929Q. REVISION TO RECORDKEEPING RULE.**

11 (a) INVESTMENT COMPANY ACT OF 1940 AMEND-
12 MENTS.—Section 31 of the Investment Company Act of
13 1940 (15 U.S.C. 80a–30) is amended—

14 (1) in subsection (a)(1), by adding at the end
15 the following: “Each person having custody or use of
16 the securities, deposits, or credits of a registered in-
17 vestment company shall maintain and preserve all
18 records that relate to the custody or use by such
19 person of the securities, deposits, or credits of the
20 registered investment company for such period or
21 periods as the Commission, by rule or regulation,
22 may prescribe, as necessary or appropriate in the
23 public interest or for the protection of investors.”;
24 and

1 (2) in subsection (b), by adding at the end the
2 following:

3 “(4) RECORDS OF PERSONS WITH CUSTODY OR
4 USE.—

5 “(A) IN GENERAL.—Records of persons
6 having custody or use of the securities, depos-
7 its, or credits of a registered investment com-
8 pany that relate to such custody or use, are
9 subject at any time, or from time to time, to
10 such reasonable periodic, special, or other ex-
11 aminations and other information and docu-
12 ment requests by representatives of the Com-
13 mission, as the Commission deems necessary or
14 appropriate in the public interest or for the pro-
15 tection of investors.

16 “(B) CERTAIN PERSONS SUBJECT TO
17 OTHER REGULATION.—Any person that is sub-
18 ject to regulation and examination by a Federal
19 financial institution regulatory agency (as such
20 term is defined under section 212(c)(2) of title
21 18, United States Code) may satisfy any exam-
22 ination request, information request, or docu-
23 ment request described under subparagraph
24 (A), by providing to the Commission a detailed
25 listing, in writing, of the securities, deposits, or

1 credits of the registered investment company
2 within the custody or use of such person.”.

3 (b) INVESTMENT ADVISERS ACT OF 1940 AMEND-
4 MENT.—Section 204 of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b–4) is amended by adding at the end
6 the following new subsection:

7 “(d) RECORDS OF PERSONS WITH CUSTODY OR
8 USE.—

9 “(1) IN GENERAL.—Records of persons having
10 custody or use of the securities, deposits, or credits
11 of a client, that relate to such custody or use, are
12 subject at any time, or from time to time, to such
13 reasonable periodic, special, or other examinations
14 and other information and document requests by
15 representatives of the Commission, as the Commis-
16 sion deems necessary or appropriate in the public in-
17 terest or for the protection of investors.

18 “(2) CERTAIN PERSONS SUBJECT TO OTHER
19 REGULATION.—Any person that is subject to regula-
20 tion and examination by a Federal financial institu-
21 tion regulatory agency (as such term is defined
22 under section 212(c)(2) of title 18, United States
23 Code) may satisfy any examination request, informa-
24 tion request, or document request described under
25 paragraph (1), by providing the Commission with a

1 detailed listing, in writing, of the securities, deposits,
2 or credits of the client within the custody or use of
3 such person.”.

4 **SEC. 929R. ENHANCED ABILITY OF COMMISSION TO OBTAIN**
5 **NEEDED INFORMATION.**

6 (a) INVESTMENT COMPANY EXAMINATION.—Section
7 31(b)(1) of the Investment Company Act of 1940 (15
8 U.S.C. 80a–30(b)(1)) is amended to read as follows:

9 “(1) IN GENERAL.—The following records shall
10 be subject, at any time, or from time to time, to
11 such reasonable periodic, special, or other examina-
12 tions by representatives of the Commission as the
13 Commission deems necessary or appropriate in the
14 public interest or for the protection of investors:

15 “(A) All records of a registered investment
16 company.

17 “(B) All records of a underwriter, broker,
18 dealer, or investment adviser that is a majority-
19 owned subsidiary of a registered investment
20 company.

21 “(C) All records required to be maintained
22 and preserved by a investment adviser that is
23 not a majority-owned subsidiary of a registered
24 investment company.

1 “(D) All records required to be maintained
2 and preserved by a depositor of a registered in-
3 vestment company.

4 “(E) All records required to be maintained
5 and preserved by a principal underwriter for a
6 registered investment company (other than a
7 closed-end company).”.

8 (b) ENHANCED AUTHORITY OF THE SECURITIES AND
9 EXCHANGE COMMISSION TO CONDUCT SURVEILLANCE
10 AND RISK ASSESSMENT.—

11 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
12 tion 17(b) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78q(b)) is amended by adding at the end
14 the following:

15 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
16 All persons described in subsection (a) are subject,
17 at any time, or from time to time, to such reason-
18 able periodic, special, or other information and docu-
19 ment requests by representatives of the Commission
20 as the Commission, by rule or order, deems nec-
21 essary or appropriate to conduct surveillance or risk
22 assessments of the securities markets, persons reg-
23 istered with the Commission under this title, or oth-
24 erwise in furtherance of the purposes of this title.”.

1 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
2 tion 31(b) of the Investment Company Act of 1940
3 (15 U.S.C. 80a–30(b)) is amended by adding at the
4 end the following:

5 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
6 All persons described in subsection (a) are subject at
7 any time, or from time to time, to such reasonable
8 periodic, special, or other information and document
9 requests by representatives of the Commission as the
10 Commission, by rule or order, deems necessary or
11 appropriate to conduct surveillance or risk assess-
12 ments of the securities markets, persons registered
13 with the Commission under this title, or otherwise in
14 furtherance of the purposes of this title.”.

15 (3) DOCUMENT REQUESTS.—Section 204 of the
16 Investment Advisers Act of 1940 (15 U.S.C. 80b–4)
17 is amended by adding at the end the following:

18 “(e) SURVEILLANCE AND RISK ASSESSMENT.—All
19 persons described in subsection (a) are subject at any
20 time, or from time to time, to such reasonable periodic,
21 special, or other information and document requests by
22 representatives of the Commission as the Commission, by
23 rule or order, deems necessary or appropriate to conduct
24 surveillance or risk assessments of the securities markets,

1 persons registered with the Commission under this title,
2 or otherwise in furtherance of the purposes of this title.”.

3 **SEC. 929S. MODERNIZATION OF INVESTOR PROTECTIONS.**

4 (a) BENEFICIAL OWNERSHIP AND SHORT-SWING
5 PROFIT REPORTING.—

6 (1) BENEFICIAL OWNERSHIP REPORTING.—Sec-
7 tion 13 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78m) is amended—

9 (A) in subsection (d)—

10 (i) in paragraph (1)—

11 (I) by inserting after “within ten
12 days after such acquisition,” the fol-
13 lowing: “or within such shorter period
14 as the Commission may establish, by
15 rule,”; and

16 (II) by striking “send to the
17 issuer of the security at its principal
18 executive office, by registered or cer-
19 tified mail, send to each exchange on
20 which the security is traded, and”;
21 and

22 (ii) in paragraph (2)—

23 (I) by striking “in the statements
24 to the issuer and the exchange, and”;
25 and

1 (II) by striking “shall be trans-
2 mitted to the issuer and the exchange
3 and”; and

4 (B) in subsection (g)—

5 (i) in paragraph (1), by striking
6 “shall send to the issuer of the security
7 and”; and

8 (ii) in paragraph (2)—

9 (I) by striking “sent to the issuer
10 and”; and

11 (II) by striking “shall be trans-
12 mitted to the issuer and”.

13 (2) SHORT-SWING PROFIT REPORTING.—Sec-
14 tion 16(a) of the Securities Exchange Act of 1934
15 (15 U.S.C. 78p(a)) is amended—

16 (A) in paragraph (1), by striking “(and, if
17 such security is registered on a national securi-
18 ties exchange, also with the exchange)”; and

19 (B) in paragraph (2)(B), by inserting after
20 “officer” the following: “, or within such short-
21 er period as the Commission may establish, by
22 rule”.

23 (c) DEFINITION OF “INTERESTED PERSON”.—Sec-
24 tion 2(a)(19)(A) of the Investment Company Act of 1940
25 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

1 (1) in clause (vii), by striking the colon at the
2 end and inserting a comma;

3 (2) by inserting before “*Provided*,” the fol-
4 lowing:

5 “(viii) any natural person who is a
6 member of a class of persons who the
7 Commission, by rule or regulation, deter-
8 mines are unlikely to exercise an appro-
9 priate degree of independence as a result
10 of—

11 “(I) a material business or pro-
12 fessional relationship with such com-
13 pany or any affiliated person of such
14 company; or

15 “(II) a close familial relationship
16 with any natural person who is an af-
17 filiated person of such company.”; and

18 (3) in clause (vii), by striking “two” and insert-
19 ing “5”.

20 (e) FINGERPRINTING.—Section 17(f)(2) of the Secu-
21 rities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is
22 amended—

23 (1) in the first sentence, by striking “and reg-
24 istered clearing agency,” and inserting “registered
25 clearing agency, registered securities information

1 processor, national securities exchange, and national
2 securities association”; and

3 (2) in the second sentence, by striking “or
4 clearing agency,” and inserting “clearing agency, se-
5 curities information processor, national securities ex-
6 change, or national securities association,”.

7 **SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY OR-**
8 **GANIZATION RULES.**

9 Section 29(a) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
11 required thereby” and inserting “a self-regulatory organi-
12 zation,”.

13 **SEC. 929U. DEADLINE FOR COMPLETING EXAMINATIONS,**
14 **INSPECTIONS AND ENFORCEMENT ACTIONS.**

15 The Securities Exchange Act of 1934 (15 U.S.C. 78a
16 et seq.) is amended by inserting after section 4D (as added
17 by section 7101) the following new section:

18 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
19 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
20 **TIONS AND INSPECTIONS.**

21 **“(a) ENFORCEMENT INVESTIGATIONS.—**

22 **“(1) IN GENERAL.—**Not later than 180 days
23 after the date on which Commission staff provide a
24 written Wells notification to any person, the Com-
25 mission staff shall either file an action against such

1 person or provide notice to the Director of the Divi-
2 sion of Enforcement of its intent to not file an ac-
3 tion.

4 “(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
5 TIONS.—Notwithstanding paragraph (1), if the Di-
6 rector of the Division of Enforcement of the Com-
7 mission or the Director’s designee determines that a
8 particular enforcement investigation is sufficiently
9 complex such that a determination regarding the fil-
10 ing of an action against a person cannot be com-
11 pleted within the deadline specified in paragraph (1),
12 the Director of the Division of Enforcement of the
13 Commission or the Director’s designee may, after
14 providing notice to the Chairman of the Commission,
15 extend such deadline as needed for one additional
16 180-day period. If after the additional 180-day pe-
17 riod the Director of the Division of Enforcement of
18 the Commission or the Director’s designee deter-
19 mines that a particular enforcement investigation is
20 sufficiently complex such that a determination re-
21 garding the filing of an action against a person can-
22 not be completed within the additional 180-day pe-
23 riod, the Director of the Division of Enforcement of
24 the Commission or the Director’s designee may,
25 after providing notice to and receiving approval of

1 the Commission, extend such deadline as needed for
2 one or more additional successive 180-day periods.

3 “(b) COMPLIANCE EXAMINATIONS AND INSPEC-
4 TIONS.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the date on which Commission staff completes
7 the on-site portion of its compliance examination or
8 inspection or receives all records requested from the
9 entity being examined or inspected, whichever is
10 later, Commission staff shall provide the entity being
11 examined or inspected with written notification indi-
12 cating either that the examination or inspection has
13 concluded, has concluded without findings, or that
14 the staff requests the entity undertake corrective ac-
15 tion.

16 “(2) EXCEPTION FOR CERTAIN COMPLEX AC-
17 TIONS.—Notwithstanding paragraph (1), if the head
18 of any division or office within the Commission re-
19 sponsible for compliance examinations and inspec-
20 tions or his designee determines that a particular
21 compliance examination or inspection is sufficiently
22 complex such that a determination regarding con-
23 cluding the examination or inspection, or regarding
24 the staff requests the entity undertake corrective ac-
25 tion, cannot be completed within the deadline speci-

1 fied in paragraph (1), the head of any division or of-
2 fice within the Commission responsible for compli-
3 ance examinations and inspections or his designee
4 may, after providing notice to the Chairman of the
5 Commission, extend such deadline as needed for one
6 additional 180-day period.”.

7 **SEC. 929V. SECURITY INVESTOR PROTECTION ACT AMEND-**
8 **MENTS.**

9 (a) INCREASING THE MINIMUM ASSESSMENT PAID
10 BY SIPC MEMBERS.—Section 4(d)(1)(C) of the Securities
11 Investor Protection Act of 1970 (15 U.S.C.
12 78ddd(d)(1)(C)) is amended by striking “\$150 per
13 annum” and inserting the following: “0.02 percent of the
14 gross revenues from the securities business of such mem-
15 ber of SIPC”.

16 (b) INCREASING THE FINE FOR PROHIBITED ACTS
17 UNDER SIPA.—Section 14(c) of the Securities Investor
18 Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

19 (1) in paragraph (1), by striking “\$50,000”
20 and inserting “\$250,000”; and

21 (2) in paragraph (2), by striking “\$50,000”
22 and inserting “\$250,000”.

23 (c) PENALTY FOR MISREPRESENTATION OF SIPC
24 MEMBERSHIP OR PROTECTION.—Section 14 of the Securi-
25 ties Investor Protection Act of 1970 (15 U.S.C. 78jjj) is

1 amended by adding at the end the following new sub-
2 section:

3 “(d) MISREPRESENTATION OF SIPC MEMBERSHIP
4 OR PROTECTION.—

5 “(1) IN GENERAL.—Any person who falsely
6 represents by any means (including, without limita-
7 tion, through the Internet or any other medium of
8 mass communication), with actual knowledge of the
9 falsity of the representation and with an intent to
10 deceive or cause injury to another, that such person,
11 or another person, is a member of SIPC or that any
12 person or account is protected or is eligible for pro-
13 tection under this Act or by SIPC, shall be liable for
14 any damages caused thereby and shall be fined not
15 more than \$250,000 or imprisoned for not more
16 than 5 years.

17 “(2) INJUNCTIONS.—Any court having jurisdic-
18 tion of a civil action arising under this Act may
19 grant temporary injunctions and final injunctions on
20 such terms as the court deems reasonable to prevent
21 or restrain any violation of paragraph (1). Any such
22 injunction may be served anywhere in the United
23 States on the person enjoined, shall be operative
24 throughout the United States, and shall be enforce-
25 able, by proceedings in contempt or otherwise, by

1 any United States court having jurisdiction over that
2 person. The clerk of the court granting the injunc-
3 tion shall, when requested by any other court in
4 which enforcement of the injunction is sought, trans-
5 mit promptly to the other court a certified copy of
6 all papers in the case on file in such clerk's office.”.

7 **SEC. 929W. NOTICE TO MISSING SECURITY HOLDERS.**

8 Section 17A of the Securities Exchange Act of 1934
9 (15 U.S.C. 78q–1) is amended by adding at the end the
10 following new subsection:

11 “(g) DUE DILIGENCE FOR THE DELIVERY OF DIVI-
12 DENDS, INTEREST, AND OTHER VALUABLE PROPERTY
13 RIGHTS.—

14 “(1) REVISION OF RULES REQUIRED.—The
15 Commission shall revise its regulations in section
16 240.17Ad–17 of title 17, Code of Federal Regula-
17 tions, as in effect on December 8, 1997, to extend
18 the application of such section to brokers and deal-
19 ers and to provide for the following:

20 “(A) A requirement that the paying agent
21 provide a single written notification to each
22 missing security holder that the missing secu-
23 rity holder has been sent a check that has not
24 yet been negotiated. The written notification
25 may be sent along with a check or other mailing

1 subsequently sent to the missing security holder
2 but must be provided no later than 7 months
3 after the sending of the not yet negotiated
4 check.

5 “(B) An exclusion for paying agents from
6 the notification requirements when the value of
7 the not yet negotiated check is less than \$25.

8 “(C) A provision clarifying that the re-
9 quirements described in subparagraph (A) shall
10 have no effect on State escheatment laws.

11 “(D) For purposes of such revised regula-
12 tions—

13 “(i) a security holder shall be consid-
14 ered a ‘missing security holder’ if a check
15 is sent to the security holder and the check
16 is not negotiated before the earlier of the
17 paying agent sending the next regularly
18 scheduled check or the elapsing of 6
19 months after the sending of the not yet ne-
20 gotiated check; and

21 “(ii) the term ‘paying agent’ includes
22 any issuer, transfer agent, broker, dealer,
23 investment adviser, indenture trustee, cus-
24 todian, or any other person that accepts
25 payments from the issuer of a security and

1 distributes the payments to the holders of
2 the security.

3 “(2) RULEMAKING.—The Commission shall
4 adopt such rules, regulations, and orders necessary
5 to implement this subsection no later than 1 year
6 after the date of enactment of this subsection. In
7 proposing such rules, the Commission shall seek to
8 minimize disruptions to current systems used by or
9 on behalf of paying agents to process payment to ac-
10 count holders and avoid requiring multiple paying
11 agents to send written notification to a missing secu-
12 rity holder regarding the same not yet negotiated
13 check.”.

14 **SEC. 929X. SHORT SALE REFORMS.**

15 (a) SHORT SALE DISCLOSURE.—Section 13(f) of the
16 Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is
17 amended by redesignating paragraphs (2), (3), (4), and
18 (5) as paragraphs (3), (4), (5), and (6), respectively, and
19 inserting after paragraph (1) the following:

20 “(2)(A) Every institutional investment manager
21 that effects a short sale of an equity security shall
22 also file a report on a daily basis with the Commis-
23 sion in such form as the Commission, by rule, may
24 prescribe. Such report shall include, as applicable,
25 the name of the institution, the name of the institu-

1 tional investment manager and the title, class,
2 CUSIP number, number of shares or principal
3 amount, aggregate fair market value of each secu-
4 rity, and any additional information requested by
5 the Commission. For purposes of section 552 of title
6 5, United States Code, this subparagraph shall be
7 considered a statute described in subsection
8 (b)(3)(B) of such section. The information contained
9 in reports of an institutional investment manager
10 filed with the Commission pursuant to this section,
11 shall be subject to the same non-disclosure and con-
12 fidentiality protection provided under section
13 204(b)(8) of the Investment Advisers Act of 1940.

14 “(B) The Commission shall prescribe rules pro-
15 viding for the public disclosure of the name of the
16 issuer and the title, class, CUSIP number, aggregate
17 amount of the number of short sales of each secu-
18 rity, and any additional information determined by
19 the Commission following the end of the reporting
20 period. At a minimum, such public disclosure shall
21 occur every month.”.

22 (b) SHORT SELLING ENFORCEMENT.—Section 9 of
23 the Securities Exchange Act of 1934 (15 U.S.C. 78i) is
24 amended—

1 (1) by redesignating subsections (d), (e), (f),
2 (g), (h), and (i) as subsections (e), (f), (g), (h), (i),
3 and (j), respectively; and

4 (2) inserting after subsection (c), the following
5 new subsection:

6 “(d) TRANSACTIONS RELATING TO SHORT SALES OF
7 SECURITIES.—It shall be unlawful for any person, directly
8 or indirectly, by the use of the mails or any means or in-
9 strumentality of interstate commerce, or of any facility of
10 any national securities exchange, or for any member of
11 a national securities exchange to effect, alone or with one
12 or more other persons, a manipulative short sale of any
13 security. The Commission shall issue such other rules as
14 are necessary or appropriate to ensure that the appro-
15 priate enforcement options and remedies are available for
16 violations of this subsection in the public interest or for
17 the protection of investors.”.

18 (c) INVESTOR NOTIFICATION.—Section 15 of the Se-
19 curities Exchange Act of 1934 (15 U.S.C. 78o) is amend-
20 ed—

21 (1) by redesignating subsections (e), (f), (g),
22 (h), and (i) as subsections (f), (g), (h), (i), and (j),
23 respectively; and

24 (2) inserting after subsection (d) the following
25 new subsection:

1 “(e) NOTICES TO CUSTOMERS REGARDING SECURI-
2 TIES LENDING.—Every registered broker or dealer shall
3 provide notice to its customers that they may elect not
4 to allow their fully paid securities to be used in connection
5 with short sales. If a broker or dealer uses a customer’s
6 securities in connection with short sales, the broker or
7 dealer shall provide notice to its customer that the broker
8 or dealer may receive compensation in connection with
9 lending the customer’s securities. The Commission, by
10 rule, as it deems necessary or appropriate in the public
11 interest and for the protection of investors, may prescribe
12 the form, content, time, and manner of delivery of any
13 notice required under this paragraph.”.

Page 1253, after line 15, insert the following new
sections (and conform the table of contents accordingly):

14 **SEC. 967. COMMISSION ORGANIZATIONAL STUDY AND RE-**
15 **FORM.**

16 (a) STUDY REQUIRED.—

17 (1) IN GENERAL.—Not later than the end of
18 the 90-day period beginning on the date of the en-
19 actment of this subtitle, the Securities and Ex-
20 change Commission (hereinafter in this section re-
21 ferred to as the “SEC”) shall hire an independent
22 consultant of high caliber and with expertise in orga-
23 nizational restructuring and the operations of capital

1 markets to examine the internal operations, struc-
2 ture, funding, and the need for comprehensive re-
3 form of the SEC, as well as the SEC's relationship
4 with and the reliance on self-regulatory organiza-
5 tions and other entities relevant to the regulation of
6 securities and the protection of securities investors
7 that are under the SEC's oversight.

8 (2) SPECIFIC AREAS FOR STUDY.—The study
9 required under paragraph (1) shall, at a minimum,
10 include the study of—

11 (A) the possible elimination of unnecessary
12 or redundant units at the SEC;

13 (B) improving communications between
14 SEC offices and divisions;

15 (C) the need to put in place a clear chain-
16 of-command structure, particularly for enforce-
17 ment examinations and compliance inspections;

18 (D) the effect of high-frequency trading
19 and other technological advances on the market
20 and what the SEC requires to monitor the ef-
21 fect of such trading and advances on the mar-
22 ket;

23 (E) the SEC's hiring authorities, work-
24 place policies, and personal practices, includ-
25 ing—

1 (i) whether there is a need to further
2 streamline hiring authorities for those who
3 are not lawyers, accountants, compliance
4 examiners, or economists;

5 (ii) whether there is a need for further
6 pay reforms;

7 (iii) the diversity of skill sets of SEC
8 employees and whether the present skill set
9 diversity efficiently and effectively fosters
10 the SEC's mission of investor protection;
11 and

12 (iv) the application of civil service
13 laws by the SEC;

14 (F) whether the SEC's oversight and reli-
15 ance on self-regulatory organizations promotes
16 efficient and effective governance for the securi-
17 ties markets; and

18 (G) whether adjusting the SEC's reliance
19 on self-regulatory organizations is necessary to
20 promote more efficient and effective governance
21 for the securities markets.

22 (b) CONSULTANT REPORT.—Not later than the end
23 of the 150-day period after being retained, the inde-
24 pendent consultant hired pursuant to subsection (a)(1)

1 shall issue a report to the SEC and the Congress con-
2 taining—

3 (1) a detailed description of any findings and
4 conclusions made while carrying out the study re-
5 quired under subsection (a)(1); and

6 (2) recommendations for legislative, regulatory,
7 or administrative action that the consultant deter-
8 mines appropriate to enable the SEC and other enti-
9 ties on which it reports to perform their statutorily
10 or otherwise mandated missions.

11 (c) SEC REPORT.—Not later than the end of the 6-
12 month period beginning on the date the consultant issues
13 the report under subsection (b), and every 6-months there-
14 after during the 2-year period following the date on which
15 the consultant issues such report, the SEC shall issue a
16 report to the Committee on Financial Services of the
17 House of Representatives and the Committee on Banking,
18 Housing, and Urban Affairs of the Senate describing the
19 SEC's implementation of the regulatory and administra-
20 tive recommendations contained in the consultant's report.

21 **SEC. 968. STUDY ON SEC REVOLVING DOOR.**

22 (a) GOVERNMENT ACCOUNTABILITY OFFICE
23 STUDY.—The Comptroller General of the United States
24 shall conduct a study that will—

1 (1) review the number of employees who leave
2 the Securities and Exchange Commission to work
3 for financial institutions regulated by such Commis-
4 sion;

5 (2) determine how many employees who leave
6 the Securities and Exchange Commission worked on
7 cases that involved financial institutions regulated by
8 such Commission;

9 (3) review the length of time employees work
10 for the Securities and Exchange Commission before
11 leaving to be employed by financial institutions regu-
12 lated by such Commission;

13 (4) review existing internal controls and make
14 recommendations on strengthening such controls to
15 ensure that employees of the Securities and Ex-
16 change Commission who are later employed by fi-
17 nancial institutions did not assist such institutions
18 in violating any rules or regulations of the Commis-
19 sion during the course of their employment with
20 such Commission;

21 (5) determine if greater post-employment re-
22 strictions are necessary to prevent employees of the
23 Securities and Exchange Commission from being
24 employed by financial institutions after employment
25 with such Commission;

1 (6) determine if the volume of employees of the
2 Securities and Exchange Commission who are later
3 employed by financial institutions has led to ineffi-
4 ciencies in enforcement;

5 (7) determine if employees of the Securities and
6 Exchange Commission who are later employed by fi-
7 nancial institutions assisted such institutions in cir-
8 cumventing Federal rules and regulations while em-
9 ployed by such Commission;

10 (8) review any information that may address
11 the volume of employees of the Securities and Ex-
12 change Commission who are later employed by fi-
13 nancial institutions, and make recommendations to
14 Congress; and

15 (9) review other additional issues as may be
16 raised during the course of the study conducted
17 under this subsection.

18 (b) REPORT.—Not later than 1 year after the date
19 of the enactment of this subtitle, the Comptroller General
20 of the United States shall submit to the Committee on
21 Financial Services of the House of Representatives and
22 the Committee on Banking, Housing, and Urban Affairs
23 of the Senate a report on the results of the study required
24 by subsection (a).

Strike section 975 and insert the following (and redesignate succeeding sections and conform the table of contents accordingly):

1 **SEC. 975. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
2 **REQUIREMENT.**

3 (a) IN GENERAL.—The Securities Exchange Act of
4 1934 (as amended by section 3204) is amended by insert-
5 ing after section 15F (15 U.S.C. 78o–7) the following new
6 section:

7 **“SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
8 **REQUIREMENT.**

9 “(a)(1)(A) It shall be unlawful for any person to
10 make use of the mails or any means or instrumentality
11 of interstate commerce to act as a municipal financial ad-
12 viser unless such person is registered as a municipal finan-
13 cial adviser in accordance with subsection (b).

14 “(B) Subparagraph (A) shall not apply to a natural
15 person associated with a municipal financial adviser, as
16 long as such adviser is registered in accordance with sub-
17 section (b) and is not a natural person.

18 “(2) The Commission, by rule or order, as it deems
19 consistent with the public interest and the protection of
20 investors, may conditionally or unconditionally exempt
21 from paragraph (1) of this section any municipal financial

1 adviser or class of municipal financial advisers specified
2 in such rule or order.

3 “(b)(1) A municipal financial adviser may be reg-
4 istered by filing with the Commission an application for
5 registration in such form and containing such information
6 and documents concerning such municipal financial ad-
7 viser and any persons associated with such municipal fi-
8 nancial adviser as the Commission, by rule, may prescribe
9 as necessary or appropriate in the public interest or for
10 the protection of investors. Within 45 days of the date of
11 the filing of such application (or within such longer period
12 as to which the applicant consents), the Commission
13 shall—

14 “(A) by order grant registration; or

15 “(B) institute proceedings to determine whether reg-
16 istration should be denied. Such proceedings shall include
17 notice of the grounds for denial under consideration and
18 opportunity for hearing and shall be concluded within 120
19 days of the date of the filing of the application for reg-
20 istration. At the conclusion of such proceedings, the Com-
21 mission, by order, shall grant or deny such registration.
22 The Commission may extend the time for conclusion of
23 such proceedings for up to 90 days if it finds good cause
24 for such extension and publishes its reasons for so finding,

1 or for such longer period as to which the applicant con-
2 sents.

3 The Commission shall grant such registration if
4 the Commission finds that the requirements of
5 this section are satisfied. The Commission shall
6 deny such registration if it does not make such
7 a finding or if it finds that if the applicant were
8 so registered, its registration would be subject
9 to suspension or revocation under paragraph
10 (4).

11 “(2) An application for registration of a municipal
12 financial adviser to be formed or organized may be made
13 by a municipal financial adviser to which the municipal
14 financial adviser to be formed or organized is to be the
15 successor. Such application, in such form as the Commis-
16 sion, by rule, may prescribe, shall contain such informa-
17 tion and documents concerning the applicant, the suc-
18 cessor, and any persons associated with the applicant or
19 the successor, as the Commission, by rule, may prescribe
20 as necessary or appropriate in the public interest or for
21 the protection of investors. The grant or denial of registra-
22 tion to such an applicant shall be in accordance with the
23 procedures set forth in paragraph (1) of this subsection.
24 If the Commission grants such registration, the registra-
25 tion shall terminate on the 45th day after the effective

1 date thereof, unless prior thereto the successor shall, in
2 accordance with such rules and regulations as the Com-
3 mission may prescribe, adopt the application for registra-
4 tion as its own.

5 “(3) Any provision of this title (other than section
6 5 and subsection (a) of this section) which prohibits any
7 act, practice, or course of business if the mails or any
8 means or instrumentality of interstate commerce is used
9 in connection therewith shall also prohibit any such act,
10 practice, or course of business by any registered municipal
11 financial adviser or any person acting on behalf of such
12 a municipal financial adviser, irrespective of any use of
13 the mails or any means or instrumentality of interstate
14 commerce in connection therewith.

15 “(4) The Commission, by order, shall censure, place
16 limitations on the activities, functions, or operations of,
17 suspend for a period not exceeding 12 months, or revoke
18 the registration of any municipal financial adviser if it
19 finds, on the record after notice and opportunity for hear-
20 ing, that such censure, placing of limitations, suspension,
21 or revocation is in the public interest and that such munic-
22 ipal financial adviser, whether prior or subsequent to be-
23 coming such, or any person associated with such municipal
24 financial adviser, whether prior or subsequent to becoming
25 so associated—

1 “(A) has willfully made or caused to be made
2 in any application for registration or report required
3 to be filed with the Commission or with any other
4 appropriate regulatory agency under this title, or in
5 any proceeding before the Commission with respect
6 to registration, any statement which was at the time
7 and in the light of the circumstances under which it
8 was made false or misleading with respect to any
9 material fact, or has omitted to state in any such
10 application or report any material fact which is re-
11 quired to be stated therein;

12 “(B) has been convicted within 10 years pre-
13 ceding the filing of any application for registration
14 or at any time thereafter of any felony or mis-
15 demeanor or of a substantially equivalent crime by
16 a foreign court of competent jurisdiction which the
17 Commission finds—

18 “(i) involves the purchase or sale of any
19 security, the taking of a false oath, the making
20 of a false report, bribery, perjury, burglary, any
21 substantially equivalent activity however de-
22 nominated by the laws of the relevant foreign
23 government, or conspiracy to commit any such
24 offense;

1 “(ii) arises out of the conduct of the busi-
2 ness of a municipal financial adviser, broker,
3 dealer, municipal securities dealer, government
4 securities broker, government securities dealer,
5 investment adviser, bank, insurance company,
6 fiduciary, transfer agent, nationally recognized
7 statistical rating organization, foreign person
8 performing a function substantially equivalent
9 to any of the above, or entity or person required
10 to be registered under the Commodity Ex-
11 change Act (7 U.S.C. 1 et seq.) or any substan-
12 tially equivalent foreign statute or regulation;

13 “(iii) involves the larceny, theft, robbery,
14 extortion, forgery, counterfeiting, fraudulent
15 concealment, embezzlement, fraudulent conver-
16 sion, or misappropriation of funds, or securities,
17 or substantially equivalent activity however de-
18 nominated by the laws of the relevant foreign
19 government; or

20 “(iv) involves the violation of section 152,
21 1341, 1342, or 1343 or chapter 25 or 47 of
22 title 18, United States Code, or a violation of
23 a substantially equivalent foreign statute;

24 “(C) is permanently or temporarily enjoined by
25 order, judgment, or decree of any court of competent

1 jurisdiction from acting as a municipal financial ad-
2 viser, investment adviser, underwriter, broker, deal-
3 er, municipal securities dealer, government securities
4 broker, government securities dealer, transfer agent,
5 nationally recognized statistical rating organization,
6 foreign person performing a function substantially
7 equivalent to any of the above, or entity or person
8 required to be registered under the Commodity Ex-
9 change Act or any substantially equivalent foreign
10 statute or regulation, or as an affiliated person or
11 employee of any investment company, bank, insur-
12 ance company, foreign entity substantially equivalent
13 to any of the above, or entity or person required to
14 be registered under the Commodity Exchange Act or
15 any substantially equivalent foreign statute or regu-
16 lation or from engaging in or continuing any con-
17 duct or practice in connection with any such activity,
18 or in connection with the purchase or sale of any se-
19 curity;

20 “(D) has willfully violated any provision of the
21 Securities Act of 1933, the Investment Advisers Act
22 of 1940, the Investment Company Act of 1940, the
23 Commodity Exchange Act, this title, the rules or
24 regulations under any of such statutes, or the rules

1 of the Municipal Securities Rulemaking Board, or is
2 unable to comply with any such provision;

3 “(E) has willfully aided, abetted, counseled,
4 commanded, induced, or procured the violation by
5 any other person of any provision of the Securities
6 Act of 1933, the Investment Advisers Act of 1940,
7 the Investment Company Act of 1940, the Com-
8modity Exchange Act, this title, the rules or regula-
9tions under any of such statutes, or the rules of the
10Municipal Securities Rulemaking Board, or has
11failed reasonably to supervise, with a view to pre-
12venting violations of the provisions of such statutes,
13rules, and regulations, another person who commits
14such a violation, if such other person is subject to
15his supervision. For the purposes of this subpara-
16graph, no person shall be deemed to have failed rea-
17sonably to supervise any other person, if—

18 “(i) there have been established proce-
19dures, and a system for applying such proce-
20dures, which would reasonably be expected to
21prevent and detect, insofar as practicable, any
22such violation by such other person; and

23 “(ii) such person has reasonably dis-
24charged the duties and obligations incumbent
25upon him by reason of such procedures and sys-

1 tem without reasonable cause to believe that
2 such procedures and system were not being
3 complied with;

4 “(F) is subject to any order of the Commission
5 barring or suspending the right of the person to be
6 associated with a municipal financial adviser;

7 “(G) has been found by a foreign financial reg-
8 ulatory authority to have—

9 “(i) made or caused to be made in any ap-
10 plication for registration or report required to
11 be filed with a foreign financial regulatory au-
12 thority, or in any proceeding before a foreign fi-
13 nancial regulatory authority with respect to reg-
14 istration, any statement that was at the time
15 and in the light of the circumstances under
16 which it was made false or misleading with re-
17 spect to any material fact, or has omitted to
18 state in any application or report to the foreign
19 financial regulatory authority any material fact
20 that is required to be stated therein;

21 “(ii) violated any foreign statute or regula-
22 tion regarding transactions in securities, or con-
23 tracts of sale of a commodity for future deliv-
24 ery, traded on or subject to the rules of a con-
25 tract market or any board of trade; or

1 “(iii) aided, abetted, counseled, com-
2 manded, induced, or procured the violation by
3 any person of any provision of any statutory
4 provisions enacted by a foreign government, or
5 rules or regulations thereunder, empowering a
6 foreign financial regulatory authority regarding
7 transactions in securities, or contracts of sale of
8 a commodity for future delivery, traded on or
9 subject to the rules of a contract market or any
10 board of trade, or has been found, by a foreign
11 financial regulatory authority, to have failed
12 reasonably to supervise, with a view to pre-
13 venting violations of such statutory provisions,
14 rules, and regulations, another person who com-
15 mits such a violation, if such other person is
16 subject to his supervision; or

17 “(H) is subject to any final order of a State se-
18 curities commission (or any agency or officer per-
19 forming like functions), State authority that super-
20 vises or examines banks, savings associations, or
21 credit unions, State insurance commission (or any
22 agency or office performing like functions), an ap-
23 propriate Federal banking agency (as defined in sec-
24 tion 3 of the Federal Deposit Insurance Act (12

1 U.S.C. 1813(q))), or the National Credit Union Ad-
2 ministration, that—

3 “(i) bars such person from association with
4 an entity regulated by such commission, author-
5 ity, agency, or officer, or from engaging in the
6 business of securities, insurance, banking, sav-
7 ings association activities, or credit union activi-
8 ties; or

9 “(ii) constitutes a final order based on vio-
10 lations of any laws or regulations that prohibit
11 fraudulent, manipulative, or deceptive conduct.

12 “(5) Pending final determination whether any reg-
13 istration under this subsection shall be revoked, the Com-
14 mission, by order, may suspend such registration, if such
15 suspension appears to the Commission, after notice and
16 opportunity for hearing, to be necessary or appropriate in
17 the public interest or for the protection of investors. Any
18 registered municipal financial adviser may, upon such
19 terms and conditions as the Commission deems necessary
20 or appropriate in the public interest or for the protection
21 of investors, withdraw from registration by filing a written
22 notice of withdrawal with the Commission. If the Commis-
23 sion finds that any registered municipal financial adviser
24 is no longer in existence or has ceased to do business as
25 a municipal financial adviser, the Commission, by order,

1 shall cancel the registration of such municipal financial
2 adviser.

3 “(6)(A) With respect to any person who is associated,
4 who is seeking to become associated, or, at the time of
5 the alleged misconduct, who was associated or was seeking
6 to become associated with a municipal financial adviser,
7 the Commission, by order, shall censure, place limitations
8 on the activities or functions of such person, or suspend
9 for a period not exceeding 12 months, or bar such person
10 from being associated with a broker, dealer, investment
11 adviser, municipal securities dealer, transfer agent, na-
12 tionally recognized statistical rating organization, or mu-
13 nicipal financial adviser, if the Commission finds, on the
14 record after notice and opportunity for a hearing, that
15 such censure, placing of limitations, suspension, or bar is
16 in the public interest and that such person—

17 “(i) has committed or omitted any act, or is
18 subject to an order or finding, enumerated in sub-
19 paragraph (A), (D), (E), (G), or (H) of paragraph
20 (4) of this subsection;

21 “(ii) has been convicted of any offense specified
22 in subparagraph (B) of such paragraph (4) within
23 10 years of the commencement of the proceedings
24 under this paragraph; or

1 “(iii) is enjoined from any action, conduct, or
2 practice specified in subparagraph (C) of such para-
3 graph (4).

4 “(B) It shall be unlawful—

5 “(i) for any person as to whom an order under
6 subparagraph (A) is in effect, without the consent of
7 the Commission, willfully to become, or to be, associ-
8 ated with a municipal financial adviser in contraven-
9 tion of such order; or

10 “(ii) for any municipal financial adviser to per-
11 mit such a person, without the consent of the Com-
12 mission, to become or remain, a person associated
13 with the municipal financial adviser in contravention
14 of such order, if such municipal financial adviser
15 knew, or in the exercise of reasonable care should
16 have known, of such order.

17 “(7) No registered municipal financial adviser shall
18 act as such unless it meets such standards of operational
19 capability and such municipal financial adviser and all
20 natural persons associated with such municipal financial
21 adviser meet such standards of training, experience, com-
22 petence, and such other qualifications as the Commission
23 finds necessary or appropriate in the public interest or for
24 the protection of investors. The Commission shall establish
25 such standards by rules and regulations, which may—

1 “(A) specify that all or any portion of such
2 standards shall be applicable to any class of munic-
3 ipal financial advisers and persons associated with
4 municipal financial advisers;

5 “(B) require persons in any such class to pass
6 tests prescribed in accordance with such rules and
7 regulations, which tests shall, with respect to any
8 class of partners, officers, or supervisory employees
9 (which latter term may be defined by the Commis-
10 sion’s rules and regulations) engaged in the manage-
11 ment of the municipal financial adviser, include
12 questions relating to bookkeeping, accounting, super-
13 vision of employees, maintenance of records, and
14 other appropriate matters; and

15 “(C) provide that persons in any such class
16 other than municipal financial advisers and partners,
17 officers, and supervisory employees of municipal fi-
18 nancial advisers, may be qualified solely on the basis
19 of compliance with such standards of training and
20 such other qualifications as the Commission finds
21 appropriate.

22 The Commission, by rule, may prescribe reasonable fees
23 and charges to defray its costs in carrying out this para-
24 graph, including, but not limited to, fees for any test ad-
25 ministered by it or under its direction.

1 “(c)(1)(A) No municipal financial adviser shall make
2 use of the mails or any means or instrumentality of inter-
3 state commerce in connection with which such municipal
4 financial adviser engages in any fraudulent, deceptive, or
5 manipulative act or practice or violates such rules and reg-
6 ulations regarding conflicts of interest or fair practices,
7 including but not limited to rules and regulations related
8 to political contributions, as the Commission shall pre-
9 scribe in the public interest or for the protection of inves-
10 tors or to maintain fair and orderly markets.

11 “(B) The Commission shall, for the purposes of this
12 paragraph as the Commission finds necessary or appro-
13 priate in the public interest or for the protection of inves-
14 tors, by rules and regulations define, and prescribe means
15 reasonably designed to prevent, such acts and practices
16 as are fraudulent, deceptive, or manipulative.

17 “(2) If the Commission finds, after notice and oppor-
18 tunity for a hearing, that any person subject to the provi-
19 sions of this section or any rule or regulation thereunder
20 has failed to comply with any such provision, rule, or regu-
21 lation in any material respect, the Commission may pub-
22 lish its findings and issue an order requiring such person,
23 and any person who was a cause of the failure to comply
24 due to an act or omission the person knew or should have
25 known would contribute to the failure to comply, to com-

1 ply, or to take steps to effect compliance, with such provi-
2 sion or such rule or regulation thereunder upon such
3 terms and conditions and within such time as the Commis-
4 sion may specify in such order.

5 “(d) Every registered municipal financial adviser
6 shall establish, maintain, and enforce written policies and
7 procedures reasonably designed, taking into consideration
8 the nature of such municipal financial adviser’s business,
9 to prevent the misuse in violation of this title, or the rules
10 or regulations thereunder, of material, nonpublic informa-
11 tion by such municipal financial adviser or any person as-
12 sociated with such municipal financial adviser. The Com-
13 mission, as it deems necessary or appropriate in the public
14 interest or for the protection of investors, shall adopt rules
15 or regulations to require specific policies or procedures
16 reasonably designed to prevent misuse in violation of this
17 title (or the rules or regulations thereunder) of material,
18 nonpublic information.

19 “(e) A municipal financial adviser and any person as-
20 sociated with such municipal financial adviser shall be
21 deemed to have a fiduciary duty to any municipal securi-
22 ties issuer for whom such municipal financial adviser acts
23 as a municipal financial adviser. A municipal financial ad-
24 viser may not engage in any act, practice, or course of
25 business which is not consistent with a municipal financial

1 adviser’s fiduciary duty. The Commission shall, for the
2 purposes of this paragraph, by rules and regulations de-
3 fine, and prescribe means reasonably designed to prevent,
4 such acts, practices, and courses of business as are not
5 consistent with a municipal financial adviser’s fiduciary
6 duty to its clients.”.

7 (b) DEFINITION.—Section 3(a) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78c(a)) (as amended by
9 section 3201(6)) is amended by adding at the end the fol-
10 lowing new paragraphs:

11 “(78) MUNICIPAL FINANCIAL ADVISER.—

12 “(A) The term ‘municipal financial adviser’
13 means a person who, for compensation, engages
14 in the business of—

15 “(i) providing advice to a municipal
16 securities issuer with respect to—

17 “(I) the issuance or proposed
18 issuance of securities, including any
19 remarketing of municipal securities
20 directly or indirectly by or on behalf
21 of a municipal securities issuer;

22 “(II) the investment of proceeds
23 from securities issued by such munic-
24 ipal securities issuer;

1 “(III) the hedging of any risks
2 associated with subclause (I) or (II),
3 including advice as to swap agree-
4 ments (as defined in section 206A of
5 the Gramm-Leach-Bliley Act regard-
6 less of whether the counterparties
7 constitute eligible contract partici-
8 pants); or

9 “(IV) preparation of disclosure
10 documents in connection with the
11 issuance, proposed issuance, or pre-
12 vious issuance of securities issued by
13 a municipal securities issuer, includ-
14 ing, without limitation, official state-
15 ments and documents prepared in
16 connection with a written agreement
17 or contract for the benefit of holders
18 of such securities described in section
19 240.15c2-12 of title 17, Code of Fed-
20 eral Regulations;

21 “(ii) assisting a municipal securities
22 issuer in selecting or negotiating guaran-
23 teed investment contracts or other invest-
24 ment products; or

1 “(iii) assisting any municipal securi-
2 ties issuer in the primary offering of secu-
3 rities not involving a public offering.

4 “(B) Such term does not include—

5 “(i) an attorney, if the attorney is of-
6 fering advice or providing services that are
7 of a traditional legal nature;

8 “(ii) a nationally recognized statistical
9 rating organization to the extent it is in-
10 volved in the process of developing credit
11 ratings;

12 “(iii) a registered broker-dealer when
13 acting as an underwriter, as such term is
14 defined in section 2(a)(11) of the Securi-
15 ties Act of 1933 (15 U.S.C. 77b(a)(11));

16 “(iv) a State or any political subdivi-
17 sion thereof; or

18 “(v) the independent accountant that
19 audits the financial statements of the mu-
20 nicipal securities issuer.

21 “(79) MUNICIPAL SECURITIES ISSUER.—The
22 term ‘municipal securities issuer’ means—

23 “(A) any entity that has the ability to
24 issue a security the interest on which is exclud-
25 able from gross income under section 103 of the

1 Internal Revenue Code of 1986 and the regula-
2 tions thereunder; or

3 “(B) any person who receives the proceeds
4 generated from the issuance of municipal secu-
5 rities.

6 “(80) PERSON ASSOCIATED WITH A MUNICIPAL
7 FINANCIAL ADVISER; ASSOCIATED PERSON OF A MU-
8 NICIPAL FINANCIAL ADVISER.—The term ‘person as-
9 sociated with a municipal financial adviser’ or ‘asso-
10 ciated person of a municipal financial adviser’ means
11 any partner, officer, director, or branch manager of
12 such municipal financial adviser (or any person oc-
13 cupying a similar status or performing similar func-
14 tions), any person directly or indirectly controlling,
15 controlled by, or under common control with such
16 municipal financial adviser, or any employee of such
17 municipal financial adviser, except that any person
18 associated with a municipal financial adviser whose
19 functions are solely clerical or ministerial shall not
20 be included in the meaning of such term for pur-
21 poses of section 15G(b) (other than paragraph (6)
22 thereof).”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) SECURITIES EXCHANGE ACT OF 1934 .—The
25 Securities Exchange Act of 1934 is amended—

1 (A) in section 15(b)(4)(B)(ii) (15 U.S.C.
2 78o(b)(4)(B)(ii)), by inserting “municipal fi-
3 nance adviser,” after “nationally recognized
4 statistical rating organization,”;

5 (B) in section 15(b)(4)(C) (15 U.S.C.
6 78o(b)(4)(C)), by inserting “municipal finance
7 adviser,” after “nationally recognized statistical
8 rating organization,”; and

9 (C) in section 17(a)(1) (15 U.S.C.
10 78q(a)(1)), by inserting “registered municipal
11 financial adviser,” after “nationally recognized
12 statistical rating organization,”.

13 (2) INVESTMENT COMPANY ACT OF 1940.—The
14 Investment Company Act of 1940 is amended—

15 (A) in section 2(a) (15 U.S.C. 80a–2(a)),
16 by inserting at the end the following new para-
17 graph:

18 “(54) The term ‘municipal finance adviser’ has
19 the same meaning as in section 3 of the Securities
20 Exchange Act of 1934.”;

21 (B) in section 9(a)(1) (15 U.S.C. 80a–
22 9(a)(1)), by inserting “municipal finance ad-
23 viser,” after “credit rating agency,”; and

1 (C) in section 9(a)(2) (15 U.S.C. 80a–
2 9(a)(2)), by inserting “municipal finance ad-
3 viser,” after “credit rating agency,”.

4 (3) INVESTMENT ADVISERS ACT OF 1940.—The
5 Investment Advisers Act of 1940 is amended—

6 (A) in section 202(a) (15 U.S.C. 80b–
7 2(a)), by inserting at the end the following new
8 paragraph:

9 “(31) The term ‘municipal finance adviser’ has
10 the same meaning as in section 3 of the Securities
11 Exchange Act of 1934.”;

12 (B) in section 203(e)(2)(B) (15 U.S.C.
13 80b–3(e)(2)(B)), by inserting “municipal fi-
14 nance adviser,” after “credit rating agency,”;
15 and

16 (C) in section 203(e)(4) (15 U.S.C. 80b–
17 3(e)(4)) is amended by inserting “municipal fi-
18 nance adviser,” after “credit rating agency,”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall take effect 30 days after the date
22 of the enactment of this subtitle.

23 (2) EFFECTIVE DATE AND REQUIREMENTS FOR
24 REGULATIONS.—Notwithstanding subsection (a), the
25 Securities and Exchange Commission shall, within

1 120 days after the date of the enactment of this
2 subtitle, publish for notice and public comment such
3 regulations as are initially required to implement
4 this section, and shall take final action with respect
5 to such regulations not later than 270 days after the
6 date of enactment of this subtitle.

7 (3) REGISTRATION DATE.—No person may con-
8 tinue to act as a municipal financial adviser, as such
9 term is defined in section 3(a)(65) of the Securities
10 Exchange Act of 1934, after 30 days after the date
11 the regulations described in subsection (b) become
12 effective unless such person has been registered as
13 required by the amendment made by this section.

14 **SEC. 976. MUNICIPAL SECURITIES RULEMAKING BOARD**
15 **MEMBERS.**

16 Section 15B(b) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78o–4(b)) is amended—

18 (1) by amending paragraph (1) to read as fol-
19 lows:

20 “(1) COMPOSITION OF THE MUNICIPAL SECURI-
21 TIES RULEMAKING BOARD.—Not later than October
22 1, 2010, the Municipal Securities Rulemaking Board
23 (hereinafter in this section referred to as the
24 ‘Board’), shall be composed of members which shall

1 perform the duties set forth in this section and shall
2 consist of—

3 “(A) a majority of independent public rep-
4 resentatives, at least one of whom shall be rep-
5 resentative of investors in municipal securities
6 and at least one of whom shall be representative
7 of issuers of municipal securities (which mem-
8 bers are hereinafter referred to as ‘public rep-
9 resentatives’);

10 “(B) at least one individual who is rep-
11 resentative of municipal securities brokers and
12 municipal securities dealers which are not
13 banks or subsidiaries or departments or divi-
14 sions of banks (which members are hereinafter
15 referred to as ‘broker-dealer representatives’);
16 and

17 “(C) at least one individual who is rep-
18 resentative of municipal securities dealers which
19 are banks or subsidiaries or departments or di-
20 visions of banks (which members are herein-
21 after referred to as ‘bank representatives’).”;
22 and

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

1 “(B) Establish fair procedures for the nomina-
2 tion and election of members of the Board and as-
3 sure fair representation in such nominations and
4 elections of municipal securities brokers and munic-
5 ipal securities dealers. Such rules—

6 “(i) shall establish requirements regarding
7 the independence of public representatives;

8 “(ii) shall provide that the number of pub-
9 lic representatives of the Board shall at all
10 times exceed the total number of broker-dealer
11 representatives and bank representatives;

12 “(iii) shall establish minimum knowledge,
13 experience, and other appropriate qualifications
14 for individuals to serve as public representa-
15 tives, which may include, among other things,
16 prior work experience in the securities, munic-
17 ipal finance, or municipal securities industries;

18 “(iv) shall specify the term members shall
19 serve; and

20 “(v) may increase or decrease the number
21 of members which shall constitute the whole
22 Board, but in no case may such number be an
23 even number.”.

Page 1293, beginning on line 16, strike “the effec-
tive date of this paragraph” and insert “the date of en-

actment of the Investor Protection and Securities Reform Act of 2010”.

Page 1295, strike lines 16 through 18.

Page 1311, line 14, strike “\$100,000,000” and insert “\$150,000,000”.

Page 1311, line 17, strike “\$75,000,000” and insert “\$125,000,000”.

Page 1311, line 21, strike “\$50,000,000” and insert “\$100,000,000”.

Page 1337, after line 7, insert the following new section (and redesignate succeeding sections and conform the table of contents accordingly):

1 SEC. 989E. CORRECTIVE RESPONSES BY HEADS OF CER-
2 TAIN ENTITIES TO DEFICIENCIES IDENTIFIED
3 BY INSPECTORS GENERAL.

4 The Chairman of the Board of Governors of the Fed-
5 eral Reserve System, the Chairman of the Commodity Fu-
6 tures Trading Commission, the Chairman of the National
7 Credit Union Administration, the Director of the Pension
8 Benefit Guaranty Corporation, and the Chairman of the
9 Securities and Exchange Commission shall each—

- 1 (1) take action to address deficiencies identified
2 by a report or investigation of the Inspector General
3 of the entity concerned; or
4 (2) certify to Congress that no action is nec-
5 essary or appropriate in connection with a deficiency
6 described in paragraph (1).

Page 1342, after line 25, insert the following (and conform the table of contents accordingly):

7 **SEC. 989G. EXEMPTION FOR NONACCELERATED FILERS.**

8 (a) EXEMPTION.—Section 404 of the Sarbanes-Oxley
9 Act of 2002 is amended by adding at the end the fol-
10 lowing:

11 “(c) EXEMPTION FOR SMALLER ISSUERS.—Sub-
12 section (b) shall not apply with respect to any audit report
13 prepared for an issuer that is not an accelerated filer with-
14 in the meaning Rule 12b–2 of the Commission (17 C.F.R.
15 240.12b–2).”.

16 (b) STUDY.—The Securities and Exchange Commis-
17 sion shall conduct a study to determine how the Commis-
18 sion could reduce the burden of complying with section
19 404(b) of the Sarbanes-Oxley Act of 2002 for companies
20 whose market capitalization is between \$75,000,000 and
21 \$250,000,000 for the relevant reporting period while
22 maintaining investor protections for such companies. The
23 study shall also consider whether any such methods of re-

1 ducing the compliance burden or a complete exemption for
2 such companies from compliance with such section would
3 encourage companies to list on exchanges in the United
4 States in their initial public offerings. Not later than 9
5 months after the date of the enactment of this subtitle,
6 the Commission shall transmit a report of such study to
7 Congress.

8 **SEC. 989H. ANALYSIS OF RULE REGARDING SMALLER RE-**
9 **PORTING COMPANIES.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) Many small businesses in cutting-edge tech-
12 nology sectors require significant capital investment
13 to develop new technologies related to clean energy,
14 drug treatments for terminal diseases and food pro-
15 duction in hunger-stricken areas of the World.

16 (2) Many technology companies conducting re-
17 search do not meet the definition of “smaller report-
18 ing company” under the Securities and Exchange
19 Commission’s Rule 12b–2 due to unusually high
20 public floats despite low or zero revenue.

21 (3) The Final Report of the Advisory Com-
22 mittee on Smaller Public Companies to the Securi-
23 ties and Exchange Commission recommended that a
24 company with a market capitalization of less than
25 about \$787,000,000 be considered a smallcap com-

1 pany and that the Commission provide exemptions
2 from section 404(b) of the Sarbanes-Oxley Act to
3 companies with less than \$250,000,000 in annual
4 revenues.

5 (b) STUDY OF USING REVENUE AS CRITERIA TO DE-
6 FINE SMALLER REPORTING COMPANY.—The Securities
7 and Exchange Commission shall conduct a study of the
8 inclusion of revenue as a criteria used in defining smaller
9 reporting company as defined under the Commission’s
10 Rule 12b–2 to account for smaller public companies with
11 public floats less than \$700,000,000 and revenues less
12 than \$250,000,000. Not later than 180 days after the date
13 of enactment of this subtitle, the Commission shall provide
14 the Committee on Financial Services of the House of Rep-
15 resentatives and the Committee on Banking, Housing and
16 Urban Affairs of the Senate a report of the findings of
17 the study.

18 **SEC. 989I. STUDY ON INTERNAL CONTROL EVALUATION**
19 **AND REPORTING COST BURDENS ON SMALL-**
20 **ER ISSUERS.**

21 (a) STUDY REQUIRED.—The Government Account-
22 ability Office shall conduct a study to determine—
23 (1) determine how to reduce the burden of com-
24 plying with section 404(b) of the Sarbanes-Oxley Act
25 of 2002 for companies whose market capitalization

1 is less than \$250,000,000 for the relevant reporting
2 period while maintaining investor protections for
3 such companies; and

4 (2) determine whether various methods of re-
5 ducing the compliance burden or a complete exemp-
6 tion for such companies (whose market capitalization
7 is less than \$250,000,000 for the relevant reporting
8 period) from such compliance would encourage com-
9 panies to list on exchanges in the United States in
10 their initial public offerings.

11 (b) REPORTS REQUIRED.—Not later than 9 months
12 after the date of the enactment of this subtitle, the Gov-
13 ernment Accountability Office shall submit a report to
14 Congress containing the findings and conclusions of the
15 studies required under subsection (a), together with such
16 recommendations for regulatory, legislative, or administra-
17 tive action as may be appropriate.



**FINANCIAL REFORM CONFERENCE: HOUSE OFFER
FOR SUBTITLE E OF TITLE IX**

Page 1222, after line 6, insert the following:

1 “(b) SHAREHOLDER APPROVAL OF GOLDEN PARA-
2 CHUTE COMPENSATION.—

3 “(1) DISCLOSURE.—In any proxy or consent
4 solicitation material (the solicitation of which is sub-
5 ject to the rules of the Commission pursuant to sub-
6 section (a)) for a meeting of the shareholders occur-
7 ring after the end of the 6-month period beginning
8 on the date of enactment of this section, at which
9 shareholders are asked to approve an acquisition,
10 merger, consolidation, or proposed sale or other dis-
11 position of all or substantially all the assets of an
12 issuer, the person making such solicitation shall dis-
13 close in the proxy or consent solicitation material, in
14 a clear and simple form in accordance with regula-
15 tions to be promulgated by the Commission, any
16 agreements or understandings that such person has
17 with any named executive officers of such issuer (or
18 of the acquiring issuer, if such issuer is not the ac-
19 quiring issuer) concerning any type of compensation

1 (whether present, deferred, or contingent) that is
2 based on or otherwise relates to the acquisition,
3 merger, consolidation, sale, or other disposition of all
4 or substantially all of the assets of the issuer and
5 the aggregate total of all such compensation that
6 may (and the conditions upon which it may) be paid
7 or become payable to or on behalf of such executive
8 officer.

9 “(2) SHAREHOLDER APPROVAL.—Any proxy or
10 consent or authorization relating to the proxy or
11 consent solicitation material containing the disclo-
12 sure required by paragraph (1) shall include a sepa-
13 rate resolution subject to shareholder vote to ap-
14 prove such agreements or understandings and com-
15 pensation as disclosed, unless such agreements or
16 understandings have been subject to a shareholder
17 vote under subsection (a).”.

Page 1222, line 7, strike “(b)” and insert “(c)”.

Page 1222, after line 19, insert the following:

18 “(d) DISCLOSURE OF VOTES.—Every institutional in-
19 vestment manager subject to section 13(f) shall report at
20 least annually how it voted on any shareholder vote pursu-
21 ant to subsection (a) and (b), unless such vote is otherwise

1 required to be reported publicly by rule or regulation of
2 the Commission.”.

Page 1225, line 13, strike “issuer, including—” and insert “issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—”.

Page 1222, line 21, strike “Section” and insert “(a) IN GENERAL.—Section”.

Page 1230, after line 23, insert the following:

3 (b) STUDY AND REPORT.—

4 (1) STUDY.—The Securities and Exchange
5 Commission shall conduct a study and review of the
6 use of compensation consultants and the effects of
7 such use.

8 (2) REPORT.—Not later than 2 years after the
9 date of the enactment of this Act, the Commission
10 shall submit a report to Congress on the results of
11 the study and review required by this subsection.

Page 1234, strike line 22 through page 1236, line
12, and insert the following:

1 **SEC. 956. ENHANCED COMPENSATION STRUCTURE RE-**
2 **PORTING.**

3 (a) ENHANCED DISCLOSURE AND REPORTING OF
4 COMPENSATION ARRANGEMENTS.—

5 (1) IN GENERAL.—Not later than 9 months
6 after the date of enactment of this title, the appro-
7 priate Federal regulators jointly shall prescribe regu-
8 lations to require each covered financial institution
9 to disclose to the appropriate Federal regulator the
10 structures of all incentive-based compensation ar-
11 rangements offered by such covered financial institu-
12 tions sufficient to determine whether the compensa-
13 tion structure—

14 (A) is aligned with sound risk manage-
15 ment;

16 (B) is structured to account for the time
17 horizon of risks; and

18 (C) meets such other criteria as the appro-
19 priate Federal regulators jointly may determine
20 to be appropriate to reduce unreasonable incen-
21 tives offered by such institutions for employees
22 to take undue risks that—

23 (i) could threaten the safety and
24 soundness of covered financial institutions;

25 or

1 (ii) could have serious adverse effects
2 on economic conditions or financial sta-
3 bility.

4 (2) RULES OF CONSTRUCTION.—Nothing in
5 this section shall be construed as requiring the re-
6 porting of the actual compensation of particular in-
7 dividuals. Nothing in this section shall be construed
8 to require a covered financial institution that does
9 not have an incentive-based payment arrangement to
10 make the disclosures required under this subsection.

11 (b) PROHIBITION ON CERTAIN COMPENSATION AR-
12 RANGEMENTS.— Not later than 9 months after the date
13 of enactment of this title, and taking into account the fac-
14 tors described in paragraph (1) of subsection (a), the ap-
15 propriate Federal regulators shall jointly prescribe regula-
16 tions that prohibit any incentive-based payment arrange-
17 ment, or any feature of any such arrangement, that the
18 regulators determine encourages inappropriate risks by
19 covered financial institutions that—

20 (1) could threaten the safety and soundness of
21 covered financial institutions; or

22 (2) could have serious adverse effects on eco-
23 nomic conditions or financial stability.

24 (c) ENFORCEMENT.— The provisions of this section
25 shall be enforced under section 505 of the Gramm-Leach-

1 Bliley Act and, for purposes of such section, a violation
2 of this section shall be treated as a violation of subtitle
3 A of title V of such Act.

4 (d) DEFINITIONS.— As used in this section—

5 (1) the term “appropriate Federal regulator”
6 means the Board of Governors of the Federal Re-
7 serve System, the Office of the Comptroller of the
8 Currency, the Board of Directors of the Federal De-
9 posit Insurance Corporation, the Director of the Of-
10 fice of Thrift Supervision, the National Credit Union
11 Administration Board, the Securities and Exchange
12 Commission, the Federal Housing Finance Agency;
13 and

14 (2) the term “covered financial institution”
15 means—

16 (A) a depository institution or depository
17 institution holding company, as such terms are
18 defined in section 3 of the Federal Deposit In-
19 surance Act (12 U.S.C. 1813);

20 (B) a broker-dealer registered under sec-
21 tion 15 of the Securities Exchange Act of 1934
22 (15 U.S.C. 78o);

23 (C) a credit union, as described in section
24 19(b)(1)(A)(iv) of the Federal Reserve Act;

1 (D) an investment advisor, as such term is
2 defined in section 202(a)(11) of the Investment
3 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

4 (E) the Federal National Mortgage Asso-
5 ciation;

6 (F) the Federal Home Loan Mortgage
7 Corporation; and

8 (G) any other financial institution that the
9 appropriate Federal regulators, jointly, by rule,
10 determine should be treated as a covered finan-
11 cial institution for purposes of this section.

12 (e) EXEMPTION FOR CERTAIN FINANCIAL INSTITU-
13 TIONS.—The requirements of this section shall not apply
14 to covered financial institutions with assets of less than
15 \$1,000,000,000.

16 (f) LIMITATION.— No regulation promulgated pursu-
17 ant to this section shall be allowed to require the recovery
18 of incentive-based compensation under compensation ar-
19 rangements in effect on the date of enactment of this title,
20 provided such compensation agreements are for a period
21 of no more than 24 months. Nothing in this title shall
22 prevent or limit the recovery of incentive-based compensa-
23 tion under any other applicable law.

Page 1237, line 19, strike the period and insert “,
and does not include a vote with respect to the

uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b-1 et seq.).”.



HOUSE PROPOSED AMENDMENTS TO TITLE XI

[Page and line #s refer to Base text of proposed conference report]

Page 1724, line 16, strike “and”.

Page 1724, line 18, strike “losses and” and insert “losses,”.

Page 1724, line 19, strike “orderly fashion.” and insert “orderly fashion, and that the Board and the Secretary of the Treasury would have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99 percent confidence that funds disbursed under the facility or program will be fully repaid, and interest thereon will be paid, to the Federal Reserve System”.

Page 1730, strike line 7 and insert the following:

- 1 (1) DEFINITIONS.—For purposes of this sub-
- 2 section, the following definitions shall apply:
- 3 (A) CREDIT FACILITY.—The term

Page 1730, after line 15, insert the following new subparagraph:

1 (B) COVERED TRANSACTION.—The term
2 “covered transaction” means any open market
3 transaction or discount window advance that
4 meets the definition of “covered transaction” in
5 section 11(s) of the Federal Reserve Act .

Page 1731, line 2, insert “or a covered transaction”
after “credit facility”.

Page 1731, line 4, strike “of” and insert “gov-
erning”.

Page 1731, line 5, insert “or covered transaction”
after “credit facility”.

Page 1731, line 7, insert “or covered transaction”
after “the facility”.

Page 1731, line 10, insert “or the conduct of a cov-
ered transaction” after “credit facility”.

Page 1731, line 16, insert “or to conduct any cov-
ered transaction” after “credit facility”.

Page 1732, line 15, insert “or covered transaction”
after “credit facility”.

Page 1732, line 16, insert “or transferred by or to”
after “by”.

Page 1732, line 17, insert “or covered transaction” after “facility”.

Page 1732, line 18, insert “or transferred” after “held”.

Page 1732, line 19, insert “or covered transaction” after “credit facility”.

Page 1733, line 5, strike “assets or collateral” and insert “assets, collateral, or transaction”.

Page 1733, line 22, strike the closing quotation marks and the 2nd period.

Page 1733, after line 22, insert the following new clause:

1 “(v) RELEASE OF COVERED TRANS-
2 ACTION INFORMATION.—The Comptroller
3 General shall release a nonredacted version
4 of any report regarding covered trans-
5 actions upon the release of the information
6 regarding such covered transactions by the
7 Board of Governors of the Federal Reserve
8 System as provided in section 11(s) of the
9 Federal Reserve Act.”.

Page 1734, strike line 19, and insert the following:

1 (a) IN GENERAL.—Section 2B of the Federal Reserve
2 Act (12 U.S.C.

Page 1735, after line 17 insert the following new
subsection:

3 (b) FEDERAL RESERVE TRANSPARENCY AND RE-
4 LEASE OF INFORMATION.—Section 11 of the Federal Re-
5 serve Act (12 U.S.C. 248) the following new subsection:

6 “(s) FEDERAL RESERVE TRANSPARENCY AND RE-
7 LEASE OF INFORMATION.—

8 “(1) IN GENERAL.—In order to ensure the dis-
9 closure in a timely manner consistent with the pur-
10 poses of this Act of information concerning the bor-
11 rowers and counterparties participating in emer-
12 gency credit facilities, discount window lending pro-
13 grams and open market operations authorized or
14 conducted by the Board or a Federal reserve bank,
15 the Board of Governors of the Federal Reserve Sys-
16 tem shall disclose, as provided in paragraph (2)—

17 “(A) the names and identifying details of
18 each borrower, participant or counterparty in
19 any credit facility or covered transaction;

20 “(B) the amount borrowed by or trans-
21 ferred by or to a specific borrower, participant
22 or counterparty in any credit facility or covered
23 transaction;

1 “(C) the interest rate or discount paid by
2 each borrower, participant or counterparty in
3 any credit facility or covered transaction; and

4 “(D) information identifying the types and
5 amounts of collateral pledged or assets trans-
6 ferred in connection with participation in any
7 credit facility or covered transaction.

8 “(2) MANDATORY RELEASE DATE.—In the case
9 of—

10 “(A) a credit facility, the Board shall dis-
11 close the information described in paragraph
12 (1) on the date that is 1 year after the effective
13 date of the termination by the Board of the au-
14 thorization of the credit facility; and

15 “(B) a covered transaction, the Board
16 shall disclose the information described in para-
17 graph (1) on the last day of the eighth calendar
18 quarter following the calendar quarter in which
19 the covered transaction was conducted.

20 “(3) EARLIER RELEASE DATE AUTHORIZED.—
21 The Chairman of the Board may publicly release the
22 information described in paragraph (1) before the
23 relevant date specified in paragraph (2) if the Chair-
24 man determines that such disclosure would be in the
25 public interest and would not harm the effectiveness

1 of the relevant credit facility or the purpose or con-
2 duct of covered transactions.

3 “(4) DEFINITIONS.—For purposes of this sub-
4 section, the following definitions shall apply:

5 “(A) CREDIT FACILITY.—The term ‘credit
6 facility’ has the same meaning as in section
7 714(f)(1)(A) of title 31, United States Code.

8 “(B) COVERED TRANSACTION.—The term
9 ‘covered transaction’ means—

10 “(i) any open market transaction with
11 a nongovernmental third party conducted
12 under the first undesignated paragraph of
13 section 14 or subparagraph (a), (b), or (c)
14 of the 2nd undesignated paragraph of such
15 section, after the date of the enactment of
16 the Restoring American Financial Stability
17 Act of 2010; and

18 “(ii) any advance made under section
19 10B after the date of the enactment of
20 such Act.

21 “(5) TERMINATION OF CREDIT FACILITY BY OP-
22 ERATION OF LAW.—A credit facility shall be deemed
23 to have terminated as of the end of the 24-month
24 period beginning on the date on which the credit fa-
25 cility ceases to make extensions of credit and loans,

1 unless the credit facility is otherwise terminated by
2 the Board before such date.

3 “(6) CONSISTENT TREATMENT OF INFORMA-
4 TION.—Except as provided in this subsection or sec-
5 tion 13(3)(D), or in section 714(f)(3)(C) of title 31,
6 United States Code, the information described in
7 paragraph (1) and information concerning the trans-
8 actions described in section 714(f) of such title, shall
9 be confidential, including for purposes of section
10 552(b)(3) of title 5 of such Code, unless the Board
11 determines that disclosure of such information would
12 be in the public interest and would not harm the ef-
13 fectiveness of the relevant credit facility or the pur-
14 pose of conduct of the relevant transactions.

15 “(7) PROTECTION OF PERSONAL PRIVACY.—
16 This subsection and section 13(3)(C), section
17 714(f)(3)(C) of title 31, United States Code, and
18 section 1109(a) or (c) of the Restoring American Fi-
19 nancial Stability Act of 2010 shall not be construed
20 as requiring any disclosure of nonpublic personal in-
21 formation (as defined for purposes of section 502 of
22 the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) con-
23 cerning any individual who is referenced in collateral
24 pledged or assets transferred in connection with a
25 credit facility or covered transaction unless the per-

1 son is a borrower, participant, or counterparty under
2 the credit facility or covered transaction.”.

Page 1735, strike line 18 and all that follows
through page 1751, line 7, and insert the following new
sections:

3 **SEC. 1104. EMERGENCY FINANCIAL STABILIZATION.**

4 (a) IN GENERAL.—Upon the written determination
5 of the Council that a liquidity event exists that could de-
6 stabilize the financial system (which determination shall
7 be made upon a vote of not less than two-thirds of the
8 members of the Council then serving) and with the written
9 consent of the Secretary of the Treasury (after certifi-
10 cation by the President that an emergency exists), the
11 Corporation may create a widely-available program de-
12 signed to avoid or mitigate adverse effects on systemic eco-
13 nomic conditions or financial stability by guaranteeing ob-
14 ligations of solvent insured depository institutions or sol-
15 vent depository institution holding companies (including
16 any affiliates thereof), if necessary to prevent systemic fi-
17 nancial instability during times of severe economic dis-
18 tress, except that a guarantee of obligations under this
19 section may not include provision of equity in any form.

20 (b) POLICIES AND PROCEDURES.—Prior to exercising
21 any authority under this section, the Corporation shall es-
22 tablish policies and procedures governing the issuance of

1 guarantees. The terms and conditions of any guarantees
2 issued shall be established by the Corporation with the ap-
3 proval of the Secretary of the Treasury and the Financial
4 Stability Oversight Council. Such terms and conditions
5 may include the Corporation requiring collateral as a con-
6 dition of any such guarantee.

7 (c) CAP FOR GUARANTEED AMOUNT.—

8 (1) IN GENERAL.—In connection with any pro-
9 gram established pursuant to subsection (a) and
10 subject to paragraph (2), the Corporation may not
11 have guaranteed debt outstanding at any time of
12 more than \$500,000,000,000 (as indexed to reflect
13 growth in assets of insured depository institutions
14 and depository institution holding companies as de-
15 termined by the Corporation).

16 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
17 ITY.—If the Corporation, with the concurrence of
18 the Council and the Secretary (in consultation with
19 the President), determines that the Corporation
20 must guarantee debt in excess of \$500,000,000,000
21 (as indexed pursuant to paragraph (1)) to prevent
22 systemic financial instability, the Corporation may
23 transmit to the Congress a request for authority to
24 guarantee debt in excess of \$500,000,000,000 (as
25 indexed pursuant to paragraph (1)). Such request

1 shall be considered granted by Congress upon adop-
2 tion of a joint resolution approving such request.
3 Such joint resolution shall be considered in the Sen-
4 ate under expedited procedures.

5 (d) FUNDING.—

6 (1) ADMINISTRATIVE EXPENSES AND COST OF
7 GUARANTEES.—A program established pursuant to
8 this section shall require funding only for the pur-
9 poses of paying administrative expenses and for pay-
10 ing a guarantee in the event that a guaranteed loan
11 defaults.

12 (2) FEES AND OTHER CHARGES.—The Corpora-
13 tion shall charge fees or other charges to all partici-
14 pants in such program established pursuant to this
15 section to offset projected losses and administrative
16 expenses. To the extent that a program established
17 pursuant to this section has expenses or losses, the
18 program will be funded entirely through fees or
19 other charges assessed on participants in such pro-
20 gram.

21 (3) EXCESS FUNDS.—If at the conclusion of
22 such program there are any excess funds collected
23 from the fees associated with such program, the
24 funds will be deposited into the Deposit Insurance

1 Fund established under section 11(a) of the Federal
2 Deposit Insurance Act.

3 (4) AUTHORITY OF CORPORATION.—For pur-
4 poses of conducting a program established pursuant
5 to this section, the Corporation—

6 (A) may borrow funds from the Secretary
7 of the Treasury, which shall be repaid in full
8 with interest through fees and charges paid by
9 participants in accordance with paragraph (2),
10 and there shall be available to the Corporation
11 amounts in the Treasury not otherwise appro-
12 priated, including for the payment of reasonable
13 administrative expenses; and

14 (B) may not borrow funds from the De-
15 posit Insurance Fund established pursuant to
16 section 11(a)(4) of the Federal Deposit Insur-
17 ance Act.

18 (5) BACK-UP SPECIAL ASSESSMENT.—To the
19 extent that the funds collected pursuant to para-
20 graph (2) are insufficient to cover any losses or ex-
21 penses (including monies borrowed pursuant to
22 paragraph (4)) arising from a program established
23 pursuant to this section, the Corporation shall im-
24 pose a special assessment solely on participants in
25 the program.

1 (e) PLAN FOR MAINTENANCE OR INCREASE OF
2 LENDING.—In connection with any application or request
3 to participate in such program authorized pursuant to this
4 section, a solvent entity seeking to participate in such pro-
5 gram shall be required to submit to the Corporation a plan
6 detailing how the use of such guaranteed funds will facili-
7 tate the increase or maintenance of such solvent com-
8 pany's level of lending to consumers or small businesses.

9 (f) SUNSET OF CORPORATION'S AUTHORITY.—The
10 Corporation's authority under subsections (a) and (d) and
11 the authority to borrow funds from the Treasury under
12 section 1609(o) shall expire on December 31, 2013.

13 (g) RULE OF CONSTRUCTION.—For purposes of this
14 section, a guarantee of deposits held by insured depository
15 institutions shall not be treated as a debt guarantee pro-
16 gram.

17 (h) DEFINITIONS.—For purposes of this section, the
18 following definitions apply:

19 (1) CORPORATION.—The term “Corporation”
20 means the Federal Deposit Insurance Corporation.

21 (2) DEPOSITORY INSTITUTION HOLDING COM-
22 PANY.—The term “depository institution holding
23 company” has the meaning given the term in section
24 3 of the Federal Deposit Insurance Act (12 U.S.C.
25 1813).

1 (3) INSURED DEPOSITORY INSTITUTION.—The
2 term “insured depository institution” has the mean-
3 ing given the term in section 3 of the Federal De-
4 posit Insurance Act (12 U.S.C. 1813).

5 (4) SOLVENT.—The term “solvent” means as-
6 sets are more than the obligations to creditors.

7 **SEC. 1105. ADDITIONAL RELATED AMENDMENTS.**

8 (a) FEDERAL DEPOSIT INSURANCE ACT RELATED
9 AMENDMENTS.—Effective upon the date of the enactment
10 of this section, the Corporation may not exercise its au-
11 thority under section 13(c)(4)(G)(i) of the Federal De-
12 posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to estab-
13 lish any widely-available debt guarantee program for
14 which section 1104 would provide authority.

15 (b) EFFECT OF DEFAULT ON AN FDIC GUAR-
16 ANTEE.—If an insured depository institution or depository
17 institution holding company participating in a program
18 under section 1104 or any participant in a debt guarantee
19 program established pursuant to section 13(c)(4)(G)(i) of
20 the Federal Deposit Insurance Act defaults on any obliga-
21 tion guaranteed by the Corporation after the date of en-
22 actment of this Act, the Corporation, unless such default
23 is cured within 60 days, or the Corporation determines
24 that such action would have serious adverse effects on eco-
25 nomic conditions or financial stability, shall—

1 (1) appoint itself as receiver for the insured de-
2 pository institution that defaults;

3 (2) with respect to any other participating com-
4 pany that is not an insured depository institution
5 that defaults—

6 (A) require consideration of whether a de-
7 termination shall be made as provided in sec-
8 tion 1603 to resolve the company under subtitle
9 G; and

10 (B) if the Corporation is not appointed re-
11 ceiver pursuant to title II within 30 days of the
12 date of default, require the company to file a
13 petition for bankruptcy under section 301 of
14 title 11, United States Code, or file a petition
15 for bankruptcy against the company under sec-
16 tion 303 of title 11, United States Code.

17 (c) AUTHORITY TO FILE INVOLUNTARY PETITION
18 FOR BANKRUPTCY.—Section 303 of title 11, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 “(m) Notwithstanding subsections (a) and (b), an in-
22 voluntary case may be commenced by the Federal Deposit
23 Insurance Corporation against a depository institution
24 holding company as defined in section 3 of the Federal
25 Deposit Insurance Act (12 U.S.C. 1813) or other company

1 participating in a guarantee program established by the
2 Corporation on the ground that the company has defaulted
3 on a debt or obligation guaranteed by the Corporation.”.

4 (d) BANKRUPTCY PRIORITY FOR DEFAULTS ON
5 DEBT GUARANTEED PURSUANT TO SECTION 1104.—Sec-
6 tion 507(a)(9) of title 11, United States Code, is amended
7 by inserting before the period at the end the following:
8 “and allowed unsecured claims based upon any debt to
9 the Federal Deposit Insurance Corporation that arose
10 prior to the commencement of the case under this title,
11 as a result of the debtor’s default on a guarantee provided
12 by the Corporation pursuant to section 1104 of the Re-
13 storing American Financial Stability Act of 2010 or the
14 Federal Deposit Insurance Act, under a program estab-
15 lished by the Corporation after the date of the enactment
16 of the Restoring American Financial Stability Act of
17 2010”.

18 **SEC. 1106. CORPORATION MAY RECEIVE WARRANTS WHEN**
19 **PAYING OR RISKING TAXPAYER FUNDS.**

20 (a) IN GENERAL.—In connection with any payment,
21 credit extension, or guarantee or any commitment under
22 section 1104, the Corporation may obtain from the in-
23 sured depository institution, depository institution holding
24 company (including any affiliates thereof), or covered fi-
25 nancial company, as the case may be—

1 (1) in the case of an insured depository institu-
2 tion, depository institution holding company (includ-
3 ing any affiliates thereof), or covered financial com-
4 pany, the securities of which are traded on a na-
5 tional securities exchange, a warrant giving the right
6 to the Corporation to receive nonvoting common
7 stock or preferred stock in such financial institution,
8 or voting stock with respect to which, the Corpora-
9 tion agrees not to exercise voting power, as the Cor-
10 poration determines appropriate; or

11 (2) in the case of any insured depository insti-
12 tution, depository institution holding company (in-
13 cluding any affiliates thereof), or covered financial
14 company other than one described in paragraph (1),
15 a warrant for common or preferred stock, or a sen-
16 ior debt instrument from such financial institution,
17 as described in subsection (b)(3).

18 (b) TERMS AND CONDITIONS.—The terms and condi-
19 tions of any warrant or senior debt instrument required
20 under subsection (a) shall meet the following require-
21 ments:

22 (1) PURPOSES.—Such terms and conditions
23 shall, at a minimum, be designed—

24 (A) to provide for reasonable participation
25 by the Corporation, for the benefit of taxpayers,

1 in equity appreciation in the case of a warrant
2 or other equity security, or a reasonable interest
3 rate premium, in the case of a debt instrument;
4 and

5 (B) to provide additional protection for the
6 taxpayer against losses from such payment, ex-
7 tension of credit, or guarantee by the Corpora-
8 tion under this title.

9 (2) AUTHORITY TO SELL, EXERCISE, OR SUR-
10 RENDER.—The Corporation may sell, exercise, or
11 surrender a warrant or any senior debt instrument
12 received under this subsection, based on the condi-
13 tions established under paragraph (1).

14 (3) CONVERSION.—The warrant shall provide
15 that if, after the warrant is received by the Corpora-
16 tion under this subsection, the financial company
17 that issued the warrant is no longer listed or traded
18 on a national securities exchange or securities asso-
19 ciation, as described in subsection (a)(1), such war-
20 rants shall convert to senior debt, or contain appro-
21 priate protections for the Corporation to ensure that
22 the Corporation is appropriately compensated for the
23 value of the warrant, in an amount determined by
24 the Corporation.

1 (4) PROTECTIONS.—Any warrant representing
2 securities to be received by the Corporation under
3 this subsection shall contain anti-dilution provisions
4 of the type employed in capital market transactions,
5 as determined by the Corporation. Such provisions
6 shall protect the value of the securities from market
7 transactions such as stock splits, stock distributions,
8 dividends, and other distributions, mergers, and
9 other forms of reorganization or recapitalization.

10 (5) EXERCISE PRICE.—The exercise price for
11 any warrant issued pursuant to this subsection shall
12 be set by the Corporation, in the interest of the tax-
13 payers.

14 (6) SUFFICIENCY.—The financial company
15 shall guarantee to the Corporation that it has au-
16 thorized shares of nonvoting stock available to fulfill
17 its obligations under this subsection. Should the fi-
18 nancial company not have sufficient authorized
19 shares, including preferred shares that may carry
20 dividend rights equal to a multiple number of com-
21 mon shares, the Corporation may, to the extent nec-
22 essary, accept a senior debt note in an amount, and
23 on such terms as will compensate the Corporation
24 with equivalent value, in the event that a sufficient

1 shareholder vote to authorize the necessary addi-
2 tional shares cannot be obtained.

3 (c) EXCEPTIONS.—The Corporation shall establish
4 an exception to the requirements of this section and appro-
5 priate alternative requirements for any participating fi-
6 nancial company that is legally prohibited from issuing se-
7 curities and debt instruments, so as not to allow cir-
8 cumvention of the requirements of this section.

Page 1751, line 10, strike “The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4” and all that follows through page 1752, line 6, and insert “The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting ‘The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the President.’”.

Page 1754, after line 17, insert the following new subsection:

9 (e) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

1 (1) NO DECISIONS BY FEDERAL RESERVE BANK
2 PRESIDENTS.—No provision of title I relating to the
3 authority of the Board of Governors shall be con-
4 strued as conferring any decision-making authority
5 on presidents of Federal reserve banks.

6 (2) VOTING DECISIONS BY BOARD.—The Board
7 of Governors shall not delegate the authority to
8 make any voting decision that the Board of Gov-
9 ernors is authorized or required to make under this
10 title I in contravention of section 11(k) of the Fed-
11 eral Reserve Act.

Page 1761, after line 14, insert the following new
section:

12 **SEC. 1110. CERTAIN RESTRICTIONS RELATED TO FOREIGN**
13 **CURRENCY SWAP AUTHORITY.**

14 Section 14 of the Federal Reserve Act is amended
15 by adding at the end the following new subsection:

16 “(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN
17 CURRENCY SWAP AUTHORITY.—A Federal reserve bank
18 may not take any action pursuant to the authority pro-
19 vided under this section with respect to foreign currency
20 swaps unless—

21 “(1) such action is approved in advance by the
22 affirmative vote of not less than five members of the

1 Board of Governors of the Federal Reserve System;
2 and
3 “(2) such action is taken with the written con-
4 currence of the Secretary of the Treasury.”.



6/16/10

HOUSE PROPOSED AMENDMENTS TO TITLE XI

[Page and line #s refer to Base text of proposed conference report]

Page 1724, line 16, strike "and".

Page 1724, line 18, strike "losses and" and insert "losses,".

Page 1724, line 19, strike "orderly fashion." and insert "orderly fashion, and that the Board and the Secretary of the Treasury would have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99 percent confidence that funds disbursed under the facility or program will be fully repaid, and interest thereon will be paid, to the Federal Reserve System".

Page 1730, strike line 7 and insert the following:

- 1 (1) DEFINITIONS.—For purposes of this sub-
- 2 section, the following definitions shall apply:
- 3 (A) CREDIT FACILITY.—The term

Page 1730, after line 15, insert the following new subparagraph:

1 (B) COVERED TRANSACTION.—The term
2 “covered transaction” means any open market
3 transaction or discount window advance that
4 meets the definition of “covered transaction” in
5 section 11(s) of the Federal Reserve Act .

Page 1731, line 2, insert “or a covered transaction”
after “credit facility”.

Page 1731, line 4, strike “of” and insert “gov-
erning”.

Page 1731, line 5, insert “or covered transaction”
after “credit facility”.

Page 1731, line 7, insert “or covered transaction”
after “the facility”.

Page 1731, line 10, insert “or the conduct of a cov-
ered transaction” after “credit facility”.

Page 1731, line 16, insert “or to conduct any cov-
ered transaction” after “credit facility”.

Page 1732, line 15, insert “or covered transaction”
after “credit facility”.

Page 1732, line 16, insert “or transferred by or to”
after “by”.

Page 1732, line 17, insert "or covered transaction" after "facility".

Page 1732, line 18, insert "or transferred" after "held".

Page 1732, line 19, insert "or covered transaction" after "credit facility".

Page 1733, line 5, strike "assets or collateral" and insert "assets, collateral, or transaction".

Page 1733, line 22, strike the closing quotation marks and the 2nd period.

Page 1733, after line 22, insert the following new clause:

1 “(v) RELEASE OF COVERED TRANS-
2 ACTION INFORMATION.—The Comptroller
3 General shall release a nonredacted version
4 of any report regarding covered trans-
5 actions upon the release of the information
6 regarding such covered transactions by the
7 Board of Governors of the Federal Reserve
8 System as provided in section 11(s) of the
9 Federal Reserve Act.”.

Page 1734, strike line 19, and insert the following:

1 (a) IN GENERAL.—Section 2B of the Federal Reserve
2 Act (12 U.S.C.

Page 1735, after line 17 insert the following new
subsection:

3 (b) FEDERAL RESERVE TRANSPARENCY AND RE-
4 LEASE OF INFORMATION.—Section 11 of the Federal Re-
5 serve Act (12 U.S.C. 248) the following new subsection:

6 “(s) FEDERAL RESERVE TRANSPARENCY AND RE-
7 LEASE OF INFORMATION.—

8 “(1) IN GENERAL.—In order to ensure the dis-
9 closure in a timely manner consistent with the pur-
10 poses of this Act of information concerning the bor-
11 rowers and counterparties participating in emer-
12 gency credit facilities, discount window lending pro-
13 grams and open market operations authorized or
14 conducted by the Board or a Federal reserve bank,
15 the Board of Governors of the Federal Reserve Sys-
16 tem shall disclose, as provided in paragraph (2)—

17 “(A) the names and identifying details of
18 each borrower, participant or counterparty in
19 any credit facility or covered transaction;

20 “(B) the amount borrowed by or trans-
21 ferred by or to a specific borrower, participant
22 or counterparty in any credit facility or covered
23 transaction;

1 “(C) the interest rate or discount paid by
2 each borrower, participant or counterparty in
3 any credit facility or covered transaction; and

4 “(D) information identifying the types and
5 amounts of collateral pledged or assets trans-
6 ferred in connection with participation in any
7 credit facility or covered transaction.

8 “(2) MANDATORY RELEASE DATE.—In the case
9 of—

10 “(A) a credit facility, the Board shall dis-
11 close the information described in paragraph
12 (1) on the date that is 1 year after the effective
13 date of the termination by the Board of the au-
14 thorization of the credit facility; and

15 “(B) a covered transaction, the Board
16 shall disclose the information described in para-
17 graph (1) on the last day of the eighth calendar
18 quarter following the calendar quarter in which
19 the covered transaction was conducted.

20 “(3) EARLIER RELEASE DATE AUTHORIZED.—
21 The Chairman of the Board may publicly release the
22 information described in paragraph (1) before the
23 relevant date specified in paragraph (2) if the Chair-
24 man determines that such disclosure would be in the
25 public interest and would not harm the effectiveness

1 of the relevant credit facility or the purpose or con-
2 duct of covered transactions.

3 “(4) DEFINITIONS.—For purposes of this sub-
4 section, the following definitions shall apply:

5 “(A) CREDIT FACILITY.—The term ‘credit
6 facility’ has the same meaning as in section
7 714(f)(1)(A) of title 31, United States Code.

8 “(B) COVERED TRANSACTION.—The term
9 ‘covered transaction’ means—

10 “(i) any open market transaction with
11 a nongovernmental third party conducted
12 under the first undesignated paragraph of
13 section 14 or subparagraph (a), (b), or (c)
14 of the 2nd undesignated paragraph of such
15 section, after the date of the enactment of
16 the Restoring American Financial Stability
17 Act of 2010; and

18 “(ii) any advance made under section
19 10B after the date of the enactment of
20 such Act.

21 “(5) TERMINATION OF CREDIT FACILITY BY OP-
22 ERATION OF LAW.—A credit facility shall be deemed
23 to have terminated as of the end of the 24-month
24 period beginning on the date on which the credit fa-
25 cility ceases to make extensions of credit and loans,

1 unless the credit facility is otherwise terminated by
2 the Board before such date.

3 “(6) CONSISTENT TREATMENT OF INFORMA-
4 TION.—Except as provided in this subsection or sec-
5 tion 13(3)(D), or in section 714(f)(3)(C) of title 31,
6 United States Code, the information described in
7 paragraph (1) and information concerning the trans-
8 actions described in section 714(f) of such title, shall
9 be confidential, including for purposes of section
10 552(b)(3) of title 5 of such Code, unless the Board
11 determines that disclosure of such information would
12 be in the public interest and would not harm the ef-
13 fectiveness of the relevant credit facility or the pur-
14 pose of conduct of the relevant transactions.

15 “(7) PROTECTION OF PERSONAL PRIVACY.—
16 This subsection and section 13(3)(C), section
17 714(f)(3)(C) of title 31, United States Code, and
18 section 1109(a) or (c) of the Restoring American Fi-
19 nancial Stability Act of 2010 shall not be construed
20 as requiring any disclosure of nonpublic personal in-
21 formation (as defined for purposes of section 502 of
22 the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) con-
23 cerning any individual who is referenced in collateral
24 pledged or assets transferred in connection with a
25 credit facility or covered transaction unless the per-

1 son is a borrower, participant, or counterparty under
2 the credit facility or covered transaction.”.

Page 1735, strike line 18 and all that follows
through page 1751, line 7, and insert the following new
sections:

3 **SEC. 1104. EMERGENCY FINANCIAL STABILIZATION.**

4 (a) IN GENERAL.—Upon the written determination
5 of the Council that a liquidity event exists that could de-
6 stabilize the financial system (which determination shall
7 be made upon a vote of not less than two-thirds of the
8 members of the Council then serving) and with the written
9 consent of the Secretary of the Treasury (after certifi-
10 cation by the President that an emergency exists), the
11 Corporation may create a widely-available program de-
12 signed to avoid or mitigate adverse effects on systemic eco-
13 nomic conditions or financial stability by guaranteeing ob-
14 ligations of solvent insured depository institutions or sol-
15 vent depository institution holding companies (including
16 any affiliates thereof), if necessary to prevent systemic fi-
17 nancial instability during times of severe economic dis-
18 tress, except that a guarantee of obligations under this
19 section may not include provision of equity in any form.

20 (b) POLICIES AND PROCEDURES.—Prior to exercising
21 any authority under this section, the Corporation shall es-
22 tablish policies and procedures governing the issuance of

+
Strike
pages
9-18
of
appe

**AMENDMENT TO THE HOUSE PROPOSED
AMENDMENTS TO TITLE XI
OFFERED BY MR. FRANK OF MASSACHUSETTS**

Page 8 of the proposal, line 2, strike the quotation marks and the final period and insert the following after such line:

1 “(8) RULE OF CONSTRUCTION.—Nothing in
2 this section is meant to affect any pending litigation
3 or lawsuits filed under section 552 of title 5, United
4 States Code (popularly known as the Freedom of In-
5 formation Act), on or before the date of the enact-
6 ment of the Restoring American Financial Stability
7 Act of 2010.”.



1 shareholder vote to authorize the necessary addi-
2 tional shares cannot be obtained.

3 (c) EXCEPTIONS.—The Corporation shall establish
4 an exception to the requirements of this section and appro-
5 priate alternative requirements for any participating fi-
6 nancial company that is legally prohibited from issuing se-
7 curities and debt instruments, so as not to allow cir-
8 cumvention of the requirements of this section.

Page 1751, line 10, strike "The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4" and all that follows through page 1752, line 6, and insert "The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting 'The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the President.'".

Page 1754, after line 17, insert the following new subsection:

9 (e) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

1 (1) NO DECISIONS BY FEDERAL RESERVE BANK
2 PRESIDENTS.—No provision of title I relating to the
3 authority of the Board of Governors shall be con-
4 strued as conferring any decision-making authority
5 on presidents of Federal reserve banks.

6 (2) VOTING DECISIONS BY BOARD.—The Board
7 of Governors shall not delegate the authority to
8 make any voting decision that the Board of Gov-
9 ernors is authorized or required to make under this
10 title I in contravention of section 11(k) of the Fed-
11 eral Reserve Act.

Page 1761, after line 14, insert the following new
section:

12 **SEC. 1110. CERTAIN RESTRICTIONS RELATED TO FOREIGN**
13 **CURRENCY SWAP AUTHORITY.**

14 Section 14 of the Federal Reserve Act is amended
15 by adding at the end the following new subsection:

16 “(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN
17 CURRENCY SWAP AUTHORITY.—A Federal reserve bank
18 may not take any action pursuant to the authority pro-
19 vided under this section with respect to foreign currency
20 swaps unless—

21 “(1) such action is approved in advance by the
22 affirmative vote of not less than five members of the

1 Board of Governors of the Federal Reserve System;
2 and
3 “(2) such action is taken with the written con-
4 currence of the Secretary of the Treasury.”.



AMENDMENT TO THE HOUSE PROPOSED
AMENDMENTS TO TITLE XI
OFFERED BY MR. FRANK OF MASSACHUSETTS

Page 8 of the proposal, line 2, strike the quotation marks and the final period and insert the following after such line:

1 “(8) RULE OF CONSTRUCTION.—Nothing in
2 this section is meant to affect any pending litigation
3 or lawsuits filed under section 552 of title 5, United
4 States Code (popularly known as the Freedom of In-
5 formation Act), on or before the date of the enact-
6 ment of the Restoring American Financial Stability
7 Act of 2010.”.



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.



HOUSE PROPOSED AMENDMENT TO TITLE X

**[Page and line numbers refer to page and line numbers of the
base text of the Conference Report]**

Page 1380, line 4, after the period insert “The Bureau shall be considered an Executive agency as defined in section 105 of title 5, United States Code. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.”.

Page 1385, line 10, insert “in accordance with the applicable provisions of title 5, United States Code” before the period.

Page 1385, beginning on line 16, strike “Notwithstanding any other” and all that follows through line 22 and insert “Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.”

Page 1385 strike line 23 and all that follows through page 1386, line 15 and insert the following new paragraphs:

1 (2) COMPENSATION.—Notwithstanding any oth-
2 erwise applicable provision of title 5, United States
3 Code, concerning compensation, including the provi-
4 sions of chapter 51 or subchapter III of chapter 53,
5 the following provisions shall apply with respect to
6 employees of the Bureau:

7 (A) The rates of basic pay for all employ-
8 ees of the Bureau may be set and adjusted by
9 the Director.

10 (B) The Director shall at all times provide
11 compensation (including benefits) to each class
12 of employees that, at a minimum, are equiva-
13 lent to the compensation and benefits then
14 being provided by the Board of Governors for
15 the corresponding class of employees.

16 (C) All such employees shall be com-
17 pensated (including benefits) on terms and con-
18 ditions that are consistent with the terms and
19 conditions set forth in section 11(l) of the Fed-
20 eral Reserve Act (12 U.S.C. 248(l)).

1 (3) LABOR-MANAGEMENT RELATIONS.—Chap-
2 ter 71 of title 5, United States Code, shall apply to
3 the Bureau and the employees of the Bureau.

4 (4) CONSULTATION.—The Bureau shall consult
5 with the Office of Personnel Management in the im-
6 plementation of the compensation authorities pro-
7 vided under paragraph (2).

8 (5) OMBUDSMAN.—The Director shall appoint
9 an Ombudsperson, who shall—

10 (A) develop and maintain expertise in and
11 understanding of the law relating to consumer
12 financial products;

13 (B) at the request of a Federal agency or
14 a State agency, and with the prior approval of
15 the Director, advise such agency with respect to
16 actions that may affect consumers;

17 (C) advise consumers who may have a le-
18 gitimate potential or actual claim against a
19 Federal agency involving the provision of con-
20 sumer financial products regarding their rights
21 under this title;

22 (D) identify Federal agency actions that
23 have potential implications for consumers and,
24 if appropriate, and with the prior approval of

1 the Director, advise the relevant Federal agen-
2 cies with respect to those implications;

3 (E) provide information to private citizens,
4 civic groups, Federal agencies, State agencies,
5 and other interested parties regarding the
6 rights of those parties under this title;

7 (F) develop, maintain, and provide exper-
8 tise designed to assist covered persons, espe-
9 cially smaller depository institutions and other
10 smaller entities to comply with regulations and
11 other requirements issued to implement the pro-
12 visions of this title, and where such assistance
13 for smaller depository institutions shall be pro-
14 vided jointly by the Agency and the appropriate
15 Federal banking agency;

16 (G) develop procedures to assist covered
17 persons, especially smaller depository institu-
18 tions and other smaller entities, in responding
19 to or challenging actions taken by the Director
20 or the Agency to implement the provisions of
21 this title and to ensure that safeguards exist to
22 preserve the confidentiality of covered persons
23 using those procedures; and

24 (H) perform such other duties as the Di-
25 rector may delegate to the Ombudsperson.

Page 1396, line 14, insert “and civil rights,” after “lending”.

Page 1398, line 1, insert “and the Committee on Energy and Commerce” after “Services”.

Page 1398, line 8, insert “and the Committee on Energy and Commerce” after “Services”.

Page 1401, strike line 1 and all that follows through line 8, and insert the following new subparagraphs:

1 (B) ADJUSTMENT OF AMOUNT.—The dol-
2 lar amount referred to in subparagraph (A)(iii)
3 shall be adjusted annually, using the average of
4 the percentages by which the operating ex-
5 penses of each comparative financial regulatory
6 agency, as reported in their annual financial
7 statements, differ from the operating expenses
8 of that agency from the prior year.

9 (C) DEFINITION.—For the purposes of
10 this section the term “comparative financial
11 regulatory agency” means—

- 12 (i) the Board of Governors;
13 (ii) the Commission;
14 (iii) the Federal Deposit Insurance
15 Corporation; and
16 (iv) the Comptroller of the Currency.

1 (D) REVIEWABILITY.—Notwithstanding
2 any other provision in this title, the funds de-
3 rived from the Federal System pursuant to this
4 subsection shall not be subject to review by the
5 Committees on Appropriations of the House of
6 Representatives and the Senate.

Page 1408, after line 24, insert the following new subsection:

7 (e) AUTHORIZATION OF APPROPRIATIONS.—For the
8 purposes of carrying out the authorities granted in this
9 title, under the enumerated consumer laws, and the laws
10 and authorities transferred under subtitles F and H, there
11 are authorized to be appropriated to the Director
12 \$200,000,000 for each of fiscal years 2010, 2011, 2012,
13 2013, and 2014.

Page 1424, strike line 9 and all that follows through line 25 (and redesignate subsequent subsections accordingly).

Page 1425, line 23, strike “or” after the semicolon.

Page 1426, line 8, strike the period at the end and insert “; or”.

Page 1426, after line 8, insert the following new subparagraph:

- 1 (D) offers or provides to a consumer—
2 (i) any payday loan;
3 (ii) any payment instrument, foreign
4 exchange service, or any service for trans-
5 mitting monetary value;
6 (iii) any private education loan, as de-
7 fined in section 140 of the Truth in Lend-
8 ing Act (15 U.S.C. 1650); or
9 (iv) any check cashing service.

Page 1445, strike line 22 and all that follows through page 1447, line12, and insert the following new subsections:

- 10 (c) EXAMINATIONS.—
11 (1) IN GENERAL.—The appropriate agency
12 shall on a periodic basis examine, or require reports
13 from, an institution referred to in subsection (a) for
14 purposes of ensuring compliance with the require-
15 ments of this title, the enumerated consumer laws,
16 and any regulation prescribed by the Director under
17 this title or pursuant to the authorities transferred
18 under subtitles F and H, and enforcing compliance
19 with such requirements.
20 (2) AGENCY ROLE IN EXAMINATIONS.—
21 (A) The appropriate agency shall provide
22 all reports, records, and documentation related

1 to the examination process to the Agency on a
2 timely and ongoing basis.

3 (B) The Director and Agency may, at its
4 discretion, include an examiner on any examina-
5 tion conducted under paragraph (1). The ap-
6 propriate agency shall involve such Agency ex-
7 aminer in the entire examination process, in-
8 cluding setting the scope of an examination,
9 participating in the examination, and providing
10 input on the examination report, matters re-
11 quiring attention and examination ratings.

12 (d) ENFORCEMENT.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of this title other than this subsection, the
15 appropriate agency shall have primary authority to
16 enforce violations identified at institutions referred
17 to in subsection (a) of any of the requirements of
18 this title, the enumerated consumers laws, and any
19 regulation prescribed by the Director under this title
20 or pursuant to the authorities transferred under
21 subtitles F and H.

22 (2) COORDINATION WITH APPROPRIATE AGEN-
23 CY.—

24 (A) REFERRAL.—

1 (i) IN GENERAL.—The Agency may
2 recommend in writing to the appropriate
3 agency that the appropriate agency initiate
4 an enforcement proceeding to the extent
5 the appropriate agency is authorized by
6 that Federal law or by this title.

7 (ii) EXPLANATION.—Any rec-
8 ommendation under clause (i) shall be ac-
9 companied by a written explanation of the
10 concerns giving rise to the recommenda-
11 tion.

12 (B) BACKSTOP ENFORCEMENT AUTHORITY
13 OF AGENCY.—If the appropriate agency does
14 not, before the end of the 120-day period begin-
15 ning on the date on which the appropriate
16 agency receives a recommendation under sub-
17 paragraph (A), initiate an enforcement pro-
18 ceeding, the Agency may initiate an enforce-
19 ment proceeding as permitted by Federal law.

Page 1459, strike line 22 and all that follows
through page 1460, line 10, and insert the following new
subsection:

20 (e) EXCLUSION FOR PRACTICE OF LAW.—

21 (1) IN GENERAL.— Except as provided under
22 paragraph (2), nothing in this title shall apply with

1 respect to an activity engaged in by an attorney, or
2 engaged in under the direction of an attorney, as
3 part of the practice of law under the laws of a State
4 in which the attorney is licensed to practice law.

5 (2) RULE OF CONSTRUCTION.—

6 (A) IN GENERAL.—Paragraph (1) shall not
7 be construed so as to limit the exercise by the
8 Director and the Agency of any rulemaking, su-
9 pervisory, enforcement, or other authority, in-
10 cluding authority to order assessments, regard-
11 ing any activity that is a financial activity de-
12 scribed in any subparagraph of section
13 4002(19) and is not engaged in as—

14 (i) part of the practice of law; or
15 (ii) incidental to the practice of law,
16 to the extent that such activity is provided ex-
17 clusively within the scope of the attorney-client
18 relationship and is not otherwise provided by or
19 under the direction of the attorney to any con-
20 sumer who is not receiving legal advice or serv-
21 ices from the attorney in connection with such
22 activity.

23 (B) EXISTING AUTHORITY.—Paragraph
24 (1) shall not be construed so as to limit the au-
25 thority of the Director and the Agency with re-

1 spect to any activity to the extent that such ac-
2 tivity is otherwise subject to any of the enumer-
3 ated consumer laws or the authorities trans-
4 ferred under subtitle F or H.

5 (3) EXCEPTION.—Notwithstanding paragraph
6 (1), an attorney’s activities related to assisting an-
7 other person in preventing a foreclosure shall be
8 subject to this title except to the extent such activi-
9 ties constitute, or are incidental to, the provision of
10 legal services to a client of the attorney

Page 1462, strike line 9 and all that follows through
page 1463, line 8, and insert the following new subpara-
graph (and redesignate the subsequent paragraph accord-
ingly):

11 (A) REGULATORY COORDINATION.—In the
12 implementation of appropriate consumer protec-
13 tion standards for consumer financial products
14 and services under this title that address the
15 provision of services specifically pertaining to
16 the administration and maintenance of any
17 specified plan or arrangement, the Director
18 shall coordinate with the Secretary of Labor
19 and the Secretary of the Treasury, as appro-
20 priate.

Page 1469, after line 24, insert the following new subsection:

1 (t) EXCLUSION FOR PAWNBROKERS.—

2 (1) IN GENERAL.—The Director and the Bu-
3 reau may not exercise any rulemaking, supervisory,
4 enforcement, or other authority, including authority
5 to order assessments, under this title with respect to
6 any pawnbroker licensed by a State or political sub-
7 division thereof, a territory of the United States, or
8 the District of Columbia, but only to the extent that
9 such person acts in such capacity and provides ei-
10 ther—

11 (A) non-recourse credit secured by a
12 possessory security interest in tangible goods
13 physically delivered by the consumer to the
14 pawnbroker for which the consumer does not
15 provide a written or electronic promise, order or
16 authorization to pay, or in any other manner
17 authorize a debit of a deposit account, prior to
18 or contemporaneously with the disbursement of
19 the original proceeds; or

20 (B) credit or any other financial activity
21 issued directly by a pawnbroker to a consumer,
22 in a case in which the good or service being
23 provided is not itself a consumer financial prod-

1 uct or service, exclusively for the purpose of en-
2 abling that consumer to purchase goods or serv-
3 ices directly from the pawnbroker.

4 (2) RULE OF CONSTRUCTION.—

5 (A) FTC AUTHORITY PRESERVED.—Ex-
6 cept as provided in subparagraph (B), no provi-
7 sion of this title shall be construed as modi-
8 fying, limiting, or superseding the authority of
9 the Federal Trade Commission with respect to
10 the activities described under paragraph (1).

11 (B) EXERCISE OF RULEMAKING AUTHOR-
12 ITY.—The Director may exercise any rule-
13 making authority regarding the activities de-
14 scribed in paragraph (1) only as may be author-
15 ized by the enumerated consumer laws or any
16 law or authority transferred under subtitle F or
17 H.

Page 1471, after line 4, insert the following new sec-
tion (and redesignate the subsequent section accordingly):

18 **SEC. 1029. EXCLUSION FOR AUTO DEALERS.**

19 (a) IN GENERAL.—The Director and the Bureau may
20 not exercise any rulemaking, supervisory, enforcement, or
21 any other authority, including authority to order assess-
22 ments over a motor vehicle dealer that is predominantly

1 engaged in the sale and servicing of motor vehicles, the
2 leasing and servicing of motor vehicles, or both.

3 (b) CERTAIN FUNCTIONS EXCEPTED.—The provi-
4 sions of subsection (a) shall not apply to any person, to
5 the extent that such person—

6 (1) provides consumers with any services re-
7 lated to residential or commercial mortgages and
8 self-financing transactions involving real property;

9 (2) operates a line of business that involves the
10 extension of retail credit or retail leases involving
11 motor vehicles, and in which—

12 (A) the extension of retail credit or retail
13 leases are provided directly to consumers; and

14 (B) the contract governing such extension
15 of retail credit or retail leases is not predomi-
16 nantly assigned to a third-party finance or leas-
17 ing source; or

18 (3) offers or provides a consumer financial
19 product or service not involving or related to the
20 sale, financing, leasing, rental, repair, refurbish-
21 ment, maintenance, or other servicing of motor vehi-
22 cles, motor vehicle parts, or any related or ancillary
23 product or service.

24 (c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in
25 this section shall be construed to modify, limit, or super-

1 sede the rulemaking or enforcement authority over motor
2 vehicle dealers that could be exercised by any Federal de-
3 partment or agency on the day before the date of enact-
4 ment of this Act.

5 (d) NO TRANSFER OF CERTAIN AUTHORITY.—Not-
6 withstanding any other provision of this Act, the consumer
7 financial protection functions of the Board of Governors
8 and the Federal Trade Commission shall not be trans-
9 ferred to the Director or the Bureau to the extent such
10 functions are with respect to a person described under
11 subsection (a).

12 (e) COORDINATION WITH OFFICE OF SERVICE MEM-
13 BER AFFAIRS.—The Board of Governors and the Federal
14 Trade Commission shall coordinate with the Office of
15 Service Member Affairs, to ensure that—

16 (1) service members and their families are edu-
17 cated and empowered to make better informed deci-
18 sions regarding consumer financial products and
19 services offered by motor vehicle dealers, with a
20 focus on motor vehicle dealers in the proximity of
21 military installations; and

22 (2) complaints by service members and their
23 families concerning such motor vehicle dealers are
24 effectively monitored and responded to, and where

1 appropriate, enforcement action is pursued by the
2 authorized agencies.

3 (f) DEFINITIONS.—For purposes of this section, the
4 following definitions shall apply:

5 (1) MOTOR VEHICLE.—The term “motor vehi-
6 cle” means—

7 (A) any self-propelled vehicle designed for
8 transporting persons or property on a street,
9 highway, or other road;

10 (B) recreational boats and marine equip-
11 ment;

12 (C) motorcycles;

13 (D) motor homes, recreational vehicle trail-
14 ers, and slide-in campers, as those terms are
15 defined in sections 571.3 and 575.103 (d) of
16 title 49, Code of Federal Regulations, or any
17 successor thereto; and

18 (E) other vehicles that are titled and sold
19 through dealers.

20 (2) MOTOR VEHICLE DEALER.—The term
21 “motor vehicle dealer” means any person or resident
22 in the United States, or any territory of the United
23 States, who is licensed by a State, a territory of the
24 United States, or the District of Columbia to engage
25 in the sale of motor vehicles.

Page 1485, after line 16, insert the following new section (and redesignate the subsequent section accordingly and strike section 989F in title IX):

1 **SEC. 1037. REGULATION OF PERSON-TO-PERSON LENDING.**

2 (a) SCOPE OF EXEMPTION FROM FEDERAL SECURI-
3 TIES REGULATION.—Section 3(a) of the Securities Act of
4 1933 (15 U.S.C. 77c(a)) is amended by adding at the end
5 the following new paragraph:

6 “(15) PERSON-TO-PERSON LENDING.—

7 “(A) IN GENERAL.—Any consumer loan,
8 and any note representing a whole or fractional
9 interest in any such loan, funded or sold
10 through a person-to-person lending platform.

11 “(B) DEFINITIONS.— For purposes of this
12 paragraph:

13 “(i) CONSUMER LOAN.—The term
14 ‘consumer loan’ means a loan made to a
15 natural person, the proceeds of which are
16 intended primarily for personal, family,
17 educational, household, or business use.

18 “(ii) PERSON-TO-PERSON LENDING
19 PLATFORM.—

20 “(I) IN GENERAL.—The term
21 ‘person-to-person lending platform’
22 means an Internet website, the pri-

1 mary purpose of which is to provide a
2 transaction platform for the funding
3 or sale of individual consumer loans,
4 or the sale of notes representing whole
5 or fractional interests in individual
6 consumer loans, by matching natural
7 persons who wish to obtain such loans
8 with persons who wish to fund them,
9 or by matching persons who wish to
10 sell such loans or notes with persons
11 who wish to purchase them.

12 “(II) PROHIBITION ON MULTIPLE
13 LOANS IN A SINGLE TRANSACTION.—
14 The term ‘person-to-person lending
15 platform’ does not include any plat-
16 form on which multiple loans may be
17 funded or sold in a single transaction,
18 or on which a note representing an in-
19 terest in multiple loans or other debt
20 obligations may be sold.”.

21 (b) REGULATION BY THE AGENCY.—

22 (1) IN GENERAL.—Primary jurisdiction for the
23 regulation of the lending activities of person-to-per-
24 son lending and person-to-person lending platforms
25 is hereby vested in the Bureau.

1 (2) INTERIM REQUIREMENTS.—Until the Direc-
2 tor issues and adopts disclosure requirements with
3 respect to the sale of consumer loans, or notes rep-
4 resenting whole or fractional interests therein, on
5 person-to-person lending platforms, a person-to-per-
6 son lending platform that registers the offer and sale
7 of any such notes under the Securities Act of 1933
8 shall, with respect to such registered offer and sale,
9 provide the disclosure required under the Securities
10 Act of 1933 to be contained in the registration
11 statement and prospectus and provide such disclo-
12 sure required in any periodic reports required to be
13 filed by such person-to-person lender pursuant to
14 section 13 or section 15(d) of the Securities Ex-
15 change Act of 1934.

16 (3) DEFINITIONS.—For purposes of this sub-
17 section, the terms “consumer loan”, “person-to-per-
18 son lending platform”, “prospectus”, and “registra-
19 tion statement” shall have the meaning given such
20 term under the Securities Act of 1933.

21 (c) RULEMAKING.—The Director may prescribe such
22 regulations and issue such orders as the Director con-
23 siders necessary or appropriate to implement the provi-
24 sions of this section and to provide borrower protection,

1 lender protection, consumer choice, and expanded con-
2 sumer access to fair and reasonable credit choices.

3 (d) EFFECTIVE DATE.—Notwithstanding any other
4 provision of this Act, this section shall take effect on the
5 date of the enactment of this Act.

Page 1496, strike line 14 and all that follows
through line 24, and insert the following new subpara-
graph:

6 “(B) the State consumer financial law pre-
7 vents, significantly interferes with, or materially
8 impairs the ability of an institution chartered as
9 a national bank to engage in the business of
10 banking. Any preemption determination under
11 this subparagraph may be made by a court or
12 by regulation or order of the Comptroller of the
13 Currency in accordance with applicable law, on
14 a case-by-case basis. Any such determination by
15 a court shall comply with the standards set
16 forth in subsection (d) of this section, with the
17 court making the subsection (d) finding de
18 novo; or”.

Page 1499, after line 18, insert the following new
subsection (and redesignate subsequent subsections ac-
cordingly):

1 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
2 other provision of law, the Comptroller of the Currency
3 may not prescribe a regulation or order pursuant to sub-
4 section (b)(1)(B) until the Comptroller of the Currency,
5 after consultation with the Consumer Financial Protection
6 Bureau, makes a finding, in writing, that a Federal law
7 provides a substantive standard, applicable to a national
8 bank, which regulates the particular conduct, activity, or
9 authority that is subject to such provision of the State
10 consumer financial law.”.

Page 1506, strike line 10 and all that follows
through line 12 (and redesignate subsequent paragraphs
accordingly).

Page 1511, line 5, insert “issued,” after “demand.”

Page 1511, line 6, insert a comma after “filed”.

Page 1514, strike line 24 and all that follows
through page 1515, line 6, and insert the following new
clause:

11 (i) OATH AND RECORDATION.—The
12 examination of any person pursuant to a
13 demand for oral testimony served under
14 this subsection shall be taken before an of-
15 ficer authorized to administer oaths and
16 affirmations by the laws of the United

1 States or of the place where the examina-
2 tion is held. The officer before whom oral
3 testimony is to be taken shall put the wit-
4 ness on oath or affirmation and shall per-
5 sonally, or by any individual acting under
6 the direction of and in the presence of the
7 officer, record the testimony of the witness.

Page 1515, lin 12, strike “Bureau investigator” and
insert “officer”.

Page 1515, line 21, strike “of” and insert “for”.

Page 1517, line 20, insert “if the refusal is” before
“on grounds”.

Page 1539, line 2, strike “have the power to”.

Page 1553, after line 6, insert the following new
subparagraph:

8 (C) RETENTION OF CONSUMER ADVISORY
9 COUNCIL.—
10 (i) RETENTION AND CONTINU-
11 ATION.—Notwithstanding the transfer of
12 functions under subparagraph (A), the
13 Consumer Advisory Council established by
14 the Board of Governors pursuant to sec-
15 tion 703(b) of Public Law 90–321 (15

1 U.S.C. 1691b(b)) shall continue as an enti-
2 ty within the Federal Reserve System.

3 (ii) ADDITIONAL FUNCTIONS.—In ad-
4 dition to the functions performed by the
5 Consumer Advisory Council as of the des-
6 ignated transfer date, the Consumer Advi-
7 sory Council shall—

8 (I) submit to the Director (and
9 make available to the public) an an-
10 nual set of recommendations for con-
11 sumer protection regulations and meet
12 with the Director to discuss the an-
13 nual recommendations;

14 (II) meet with the Board of Gov-
15 ernors of the Federal Reserve System
16 at least once a year and provide oral
17 or written representations concerning
18 matters within the jurisdiction of the
19 Board; and

20 (III) call for information and
21 make recommendations in regard to
22 consumer protection regulations.

23 (iii) RESPONSE TO RECOMMENDA-
24 TIONS.—When the Chair of the Federal
25 Reserve testifies before Congress, the

1 Chair shall also testify about the rec-
2 ommendations of the Consumer Advisory
3 Council under clause (ii)(II) and its rec-
4 ommendations for consumer protection
5 regulations.

Page 1598, after line 10, insert the following new
section (and redesignate subsequent sections accordingly):

6 **SEC. 1071. AMENDMENTS TO THE FEDERAL TRADE COM-**
7 **MISSION ACT.**

8 (a) Section 5(m)(1)(A) of the Federal Trade Com-
9 mission Act (15 U.S.C. 45(m)(1)(A)) is amended—

10 (1) by inserting “this Act or” after “violates”
11 the first place such term appears;

12 (2) by inserting a comma after “under this
13 Act”;

14 (3) by inserting a comma after “subsection
15 (a)(1))”; and

16 (4) by inserting “a violation of this Act or is”
17 before “prohibited”.

18 (b) Section 5 of the Federal Trade Commission Act
19 (15 U.S.C. 45) is amended by adding at the end thereof
20 the following new subsection:

21 “(o) UNLAWFUL ASSISTANCE.—It is unlawful for any
22 person, partnership, or corporation, knowingly or reck-
23 lessly, to provide substantial assistance to another in vio-

1 lating any provision of this Act or of any other Act en-
2 forceable by the Commission that relates to unfair or de-
3 ceptive acts or practices. Any such violation shall con-
4 stitute an unfair or deceptive act or practice described in
5 section 5(a)(1) of this Act. Nothing in this section shall
6 be construed as limiting or superseding the protection pro-
7 vided to any provider or user qualifying for protection
8 under section 230(c)(1) of the Communications Act of
9 1934 (47 U.S.C. 230(c)(1)).”.

10 (c) Section 18 of the Federal Trade Commission Act
11 (15 U.S.C. 57a) is amended—

12 (1) in subsection (a)(1), by striking “(h)” and
13 inserting “(f)”;

14 (2) by amending subsection (b) to read as fol-
15 lows:

16 “(b) PROCEDURE APPLICABLE.—When prescribing a
17 rule under subsection (a)(1)(B) of this section, the Com-
18 mission shall proceed in accordance with section 553 of
19 title 5.”;

20 (3) by striking subsection (c);

21 (4) in subsection (d), by striking “(d)(1) The
22 Commission’s” and all that follows through the end
23 of paragraph (2) and by redesignating paragraph (3)
24 of such subsection as subsection (c);

1 (5) In such subsection (c) (as so redesignated),
2 by inserting “prescribed” after “any rule”;

3 (6) by striking subsections (f), (i), and (j) and
4 redesignating subsections (e), (g), and (h) as sub-
5 sections (d), (e), and (f), respectively;

6 (7) in subsection (c) (as redesignated), by in-
7 serting “prescribed” after “rule”; and

8 (8) in subsection (d) (as redesignated)—

9 (A) in paragraph (1)(A) by striking “pro-
10 mulgated” and inserting “prescribed”;

11 (B) in paragraph (1)(B), by striking “the
12 transcript required by subsection (c)(5),”;

13 (C) in paragraph (3), by striking “The
14 court shall hold unlawful” and all that follows
15 through the end of the paragraph; and

16 (D) by striking paragraphs (4) and (5)
17 and inserting the following:

18 “(4) The procedure set forth in this subsection for
19 judicial review of a rule prescribed under subsection
20 (a)(1)(B) is the exclusive means for such review, other
21 than in an enforcement proceeding.”; and

22 (9) in subsection (e)(2) (as so redesignated), by
23 striking “class or persons” and inserting “class of
24 persons”.

1 (d) Section 16(a)(2) of the Federal Trade Commis-
2 sion Act (15 U.S.C. 56(a)(2)) is amended—

3 (1) in subparagraph (D), by striking “; or” and
4 inserting a semicolon; and

5 (2) by inserting after subparagraph (E) the fol-
6 lowing:

7 “(F) to obtain a civil penalty authorized
8 under any provision of law enforced by the
9 Commission.”.

10 (e) Section 5(l) of the Federal Trade Commission Act
11 (15 U.S.C. 45(l)) is amended in the first sentence by in-
12 serting “the Commission or” after “brought by”.

Page 1611, beginning on line 7, strike “describing
the amount” and all that follows through line 10 and in-
sert

“(i) the amount of currency that will
be received by the designated recipient,
using the values of the currency into which
the funds will be exchanged;

13 “(ii) the total amount of fees charged
14 by the remittance transfer provider for the
15 remittance transfer;

16 “(iii) any exchange rate to be used by
17 the remittance transfer provider for the re-

1 mittance transfer to the nearest 1/100th of
2 a point; and”.

Page 1611. line 21, insert “if either the telephone number or the address of the designated recipient are provided by the sender” before the semicolon.

Page 1616, line 16, strike “may” and insert “shall”.

Page 1618, strike line 3 and all that follows through line 7, and insert the following:

3 (c) REGULATIONS REGARDING NOT-FIXED-ON-SEND
4 TRANSFERS.—For a remittance transfer where, for any
5 reason, the exchange rate for the transaction is not fixed
6 on send and the sender does not know the amount of cur-
7 rency that will be received by the designated recipient, the
8 Board shall prescribe regulations

Page 1618, beginning on line 9, strike “to address” and insert “addressing”.

Page 1622, line 10, strike “shall” and insert “may”.

Page 1622, line 16, strike “may” and insert “shall”.

Page 1631, line 16, strike “The Electronic Fund Transfer Act” and insert “(a) IN GENERAL.—The Electronic Fund Transfer Act”.

Page1632, strike line 1 and all that follows through
page 1637, line 19, and insert the following:

1 “(1) REGULATORY AUTHORITY OVER INTER-
2 CHANGE TRANSACTION FEES.—The Board may pre-
3 scribe regulations, pursuant to section 553 of title 5,
4 United States Code, regarding any interchange
5 transaction fee that an issuer may receive or charge
6 with respect to an electronic debit transaction, to
7 implement this subsection (including related defini-
8 tions), and to prevent circumvention or evasion of
9 this subsection.

10 “(2) REASONABLE INTERCHANGE TRANSACTION
11 FEES.—The amount of any interchange transaction
12 fee that an issuer may receive or charge with respect
13 to an electronic debit transaction shall be reasonable
14 and proportional to the cost incurred by the issuer
15 with respect to the transaction.

16 “(3) RULEMAKING REQUIRED.—

17 “(A) IN GENERAL.—The Board shall pre-
18 scribe regulations in final form not later than
19 9 months after the date of enactment of the
20 Consumer Financial Protection Act of 2010, to
21 establish standards for assessing whether the
22 amount of any interchange transaction fee de-
23 scribed in paragraph (2) is reasonable and pro-

1 portional to the cost incurred by the issuer with
2 respect to the transaction.

3 “(B) INFORMATION COLLECTION.—The
4 Board may require any issuer (or agent of an
5 issuer) or payment card network to provide the
6 Board with such information as may be nec-
7 essary to carry out the provisions of this sub-
8 section and the Board, in issuing rules under
9 subparagraph (A) and on at least a bi-annual
10 basis thereafter, shall disclose such aggregate
11 or summary information concerning the costs
12 incurred, and interchange transaction fees
13 charged or received, by issuers or payment card
14 networks in connection with the authorization,
15 clearance or settlement of electronic debit
16 transactions as the Board considers appropriate
17 and in the public interest.

18 “(4) CONSIDERATIONS.—In prescribing regula-
19 tions under paragraph (3)(A), the Board shall—

20 “(A) consider the functional similarity be-
21 tween—

22 “(i) electronic debit transactions; and

23 “(ii) checking transactions that are
24 required within the Federal Reserve bank
25 system to clear at par;

1 “(B) distinguish between—

2 “(i) the incremental cost incurred by
3 an issuer for the role of the issuer in the
4 authorization, clearance, or settlement of a
5 particular electronic debit transaction,
6 which cost shall be considered under para-
7 graph (2); and

8 “(ii) other costs incurred by an issuer
9 which are not specific to a particular elec-
10 tronic debit transaction, which costs shall
11 not be considered under paragraph (2);
12 and

13 “(C) consult, as appropriate, with the
14 Comptroller of the Currency, the Board of Di-
15 rectors of the Federal Deposit Insurance Cor-
16 poration, the Director of the Office of Thrift
17 Supervision, the National Credit Union Admin-
18 istration Board, the Administrator of the Small
19 Business Administration, and the Director of
20 the Bureau of Consumer Financial Protection.

21 “(5) ADJUSTMENTS TO INTERCHANGE TRANS-
22 ACTION FEES FOR FRAUD PREVENTION COSTS.—

23 “(A) ADJUSTMENTS.—The Board may
24 allow for an adjustment to the fee amount re-

1 ceived or charged by an issuer under paragraph
2 (2) if—

3 “(i) such adjustment is reasonably
4 necessary to make allowance for costs in-
5 curred by the issuer in preventing fraud in
6 relation to electronic debit transactions in-
7 volving that issuer; and

8 “(ii) the issuer complies with the
9 fraud-related standards established by the
10 Board under subparagraph (B), which
11 standards shall—

12 “(I) be designed to ensure that
13 any fraud-related adjustment of the
14 issuer is limited to the amount de-
15 scribed in clause (i) and takes into ac-
16 count any fraud-related reimburse-
17 ments (including amounts from
18 charge-backs) received from con-
19 sumers, merchants, or payment card
20 networks in relation to electronic debit
21 transactions involving the issuer; and

22 “(II) require issuers to take ef-
23 fective steps to reduce the occurrence
24 of, and costs from, fraud in relation
25 to electronic debit transactions, in-

1 cluding through the development and
2 implementation of cost-effective fraud
3 prevention technology.

4 “(B) RULEMAKING REQUIRED.—

5 “(i) IN GENERAL.—The Board shall
6 prescribe regulations in final form not later
7 than 9 months after the date of enactment
8 of the Consumer Financial Protection Act
9 of 2010, to establish standards for making
10 adjustments under this paragraph.

11 “(ii) FACTORS FOR CONSIDER-
12 ATION.—In issuing the standards and pre-
13 scribing regulations under this paragraph,
14 the Board shall consider the following fac-
15 tors:

16 “(I) The nature, type, and occur-
17 rence of fraud in electronic debit
18 transactions.

19 “(II) The extent to which the oc-
20 currence of fraud depends on whether
21 authorization in an electronic debit
22 transaction is based on signature,
23 PIN, or other means.

24 “(III) The available and economi-
25 cal means by which fraud on elec-

1 tronic debit transactions may be re-
2 duced.

3 “(IV) The fraud prevention and
4 data security costs expended by each
5 party involved in electronic debit
6 transactions (including consumers,
7 persons who accept debit cards as a
8 form of payment, financial institu-
9 tions, retailers and payment card net-
10 works).

11 “(V) The costs of fraudulent
12 transactions absorbed by each party
13 involved in such transactions (includ-
14 ing consumers, persons who accept
15 debit cards as a form of payment, fi-
16 nancial institutions, retailers and pay-
17 ment card networks).

18 “(VI) The extent to which inter-
19 change transaction fees have in the
20 past reduced or increased incentives
21 for parties involved in electronic debit
22 transactions to reduce fraud on such
23 transactions.

24 “(VII) Such other factors as the
25 Board considers appropriate.

1 “(6) EXEMPTION FOR SMALL ISSUERS.—

2 “(A) IN GENERAL.—This subsection shall
3 not apply to any issuer that, together with its
4 affiliates, has assets of less than
5 \$10,000,000,000, and the Board shall exempt
6 such issuers from regulations prescribed under
7 paragraph (3)(A).

8 “(B) DEFINITION.—For purposes of this
9 paragraph, the term “issuer” shall be limited to
10 the person holding the asset account that is
11 debited through an electronic debit transaction.

12 “(7) EXEMPTION FOR GOVERNMENT-ADMINIS-
13 TERED PAYMENT PROGRAMS AND RELOADABLE PRE-
14 PAID CARDS.—

15 “(A) IN GENERAL.—This subsection shall
16 not apply to an interchange transaction fee
17 charged or received with respect to an electronic
18 debit transaction in which a person uses—

19 “(i) a debit card or general-use pre-
20 paid card that has been provided to a per-
21 son pursuant to a Federal, State or local
22 government-administered payment pro-
23 gram, in which the person may only use
24 the debit card or general-use prepaid card
25 to transfer or debit funds, monetary value,

1 or other assets that have been provided
2 pursuant to such program; or

3 “(ii) a plastic card, payment code, or
4 device that is—

5 “(I) linked to such funds, mone-
6 tary value, or assets which are pur-
7 chased or loaded on a prepaid basis;

8 “(II) not issued or approved for
9 use to access or debit any account
10 held by or for the benefit of the card
11 holder (other than a subaccount or
12 other method of recording or tracking
13 funds purchased or loaded on the card
14 on a prepaid basis);

15 “(III) redeemable at multiple,
16 unaffiliated merchants or service pro-
17 viders, or automated teller machines;

18 “(IV) used to transfer or debit
19 funds, monetary value, or other as-
20 sets; and

21 “(V) reloadable and not mar-
22 keted or labeled as a gift card or gift
23 certificate.

24 “(B) EXCEPTION.—Notwithstanding sub-
25 paragraph (A), after the end of the 1-year pe-

1 riod beginning on the effective date provided in
2 paragraph (9), this subsection shall apply to an
3 interchange transaction fee charged or received
4 with respect to an electronic debit transaction
5 described in subparagraph (A)(i) in which a
6 person uses a general-use prepaid card, or an
7 electronic debit transaction described in sub-
8 paragraph (A)(ii), if any of the following fees
9 may be charged to a person with respect to the
10 card:

11 “(i) A fee for an overdraft, including
12 a shortage of funds or a transaction proc-
13 essed for an amount exceeding the account
14 balance.

15 “(ii) A fee imposed by the issuer for
16 the first withdrawal per month from an
17 automated teller machine that is part of
18 the issuer’s designated automated teller
19 machine network.

20 “(C) DEFINITION.—For purposes of sub-
21 paragraph (B), the term ‘designated automated
22 teller machine network’ means either—

23 “(i) all automated teller machines
24 identified in the name of the issuer; or

1 “(ii) any network of automated teller
2 machines identified by the issuer that pro-
3 vides reasonable and convenient access to
4 the issuer’s customers.

5 “(D) REPORTING.—Beginning 12 months
6 after the date of enactment of the Consumer
7 Financial Protection Act of 2010, the Board
8 shall annually provide a report to the Congress
9 regarding —

10 “(i) the prevalence of the use of gen-
11 eral-use prepaid cards in Federal, State or
12 local government-administered payment
13 programs; and

14 “(ii) the interchange transaction fees
15 and cardholder fees charged with respect
16 to the use of such general-use prepaid
17 cards.

18 “(8) REGULATORY AUTHORITY OVER NETWORK
19 FEES.—

20 “(A) IN GENERAL.—The Board may pre-
21 scribe regulations, pursuant to section 553 of
22 title 5, United States Code, regarding any net-
23 work fee.

1 “(B) LIMITATION.—The authority under
2 subparagraph (A) to prescribe regulations shall
3 be limited to regulations to ensure that—

4 “(i) a network fee is not used to di-
5 rectly or indirectly compensate an issuer
6 with respect to an electronic debit trans-
7 action; and

8 “(ii) a network fee is not used to cir-
9 cumvent or evade the restrictions of this
10 subsection and regulations prescribed
11 under such subsection.

12 “(C) RULEMAKING REQUIRED.—The
13 Board shall prescribe regulations in final form
14 before the end of the 9-month period beginning
15 on the date of the enactment of the Consumer
16 Financial Protection Act of 2010, to carry out
17 the authorities provided under subparagraph
18 (A).

19 “(D) EFFECTIVE DATE.—Paragraph (2)
20 shall take effect at the end of the 12-month pe-
21 riod beginning on the date of the enactment of
22 the Consumer Financial Protection Act of
23 2010.

24 “(b) LIMITATION ON PAYMENT CARD NETWORK RE-
25 STRICTIONS.—

1 “(1) PROHIBITIONS AGAINST EXCLUSIVITY AR-
2 RANGEMENTS.—

3 “(A) NO EXCLUSIVE NETWORK.—The
4 Board shall, before the end of the 1-year period
5 beginning on the date of the enactment of the
6 Consumer Financial Protection Act of 2010,
7 prescribe regulations providing that an issuer or
8 payment card network shall not directly or
9 through any agent, processor, or licensed mem-
10 ber of a payment card network, by contract, re-
11 quirement, condition, penalty, or otherwise, re-
12 strict the number of payment card networks on
13 which an electronic debit transaction may be
14 processed to—

15 “(i) 1 such network; or

16 “(ii) 2 or more such networks which
17 are owned, controlled, or otherwise oper-
18 ated by —

19 “(I) affiliated persons; or

20 “(II) networks affiliated with
21 such issuer.

22 “(B) NO ROUTING RESTRICTIONS.—The
23 Board shall, before the end of the 1-year period
24 beginning on the date of the enactment of the
25 Consumer Financial Protection Act of 2010,

1 prescribe regulations providing that an issuer or
2 payment card network shall not, directly or
3 through any agent, processor, or licensed mem-
4 ber of the network, by contract, requirement,
5 condition, penalty, or otherwise, inhibit the abil-
6 ity of any person who accepts debit cards for
7 payments to direct the routing of electronic
8 debit transactions for processing over any pay-
9 ment card network that may process such
10 transactions.

11 “(2) LIMITATION ON RESTRICTIONS ON OFFER-
12 ING DISCOUNTS FOR USE OF A FORM OF PAY-
13 MENT.—

14 “(A) IN GENERAL.—A payment card net-
15 work shall not, directly or through any agent,
16 processor, or licensed member of the network,
17 by contract, requirement, condition, penalty, or
18 otherwise, inhibit the ability of any person to
19 provide a discount or in-kind incentive for pay-
20 ment by the use of cash, checks, debit cards, or
21 credit cards to the extent that—

22 “(i) in the case of a discount or in-
23 kind incentive for payment by the use of
24 debit cards, the discount or in-kind incen-

1 tive does not differentiate on the basis of
2 the issuer or the payment card network;

3 “(ii) in the case of a discount or in-
4 kind incentive for payment by the use of
5 credit cards, the discount or in-kind incen-
6 tive does not differentiate on the basis of
7 the issuer or the payment card network;
8 and

9 “(iii) to the extent required by Fed-
10 eral law and applicable State law, such dis-
11 count or in-kind incentive is offered to all
12 prospective buyers and disclosed clearly
13 and conspicuously.

14 “(B) LAWFUL DISCOUNTS.—For purposes
15 of this paragraph, the network may not penalize
16 any person for the providing of a discount that
17 is in compliance with Federal law and applica-
18 ble State law.

19 “(3) LIMITATION ON RESTRICTIONS ON SET-
20 TING TRANSACTION MINIMUMS OR MAXIMUMS.—

21 “(A) IN GENERAL.—A payment card net-
22 work shall not, directly or through any agent,
23 processor, or licensed member of the network,
24 by contract, requirement, condition, penalty, or
25 otherwise, inhibit the ability—

1 “(i) of any person to set a minimum
2 dollar value for the acceptance by that per-
3 son of credit cards, to the extent that —

4 “(I) such minimum dollar value
5 does not differentiate between issuers
6 or between payment card networks;
7 and

8 “(II) such minimum dollar value
9 does not exceed \$10.00; or

10 “(ii) of any Federal agency or institu-
11 tion of higher education to set a maximum
12 dollar value for the acceptance by that
13 Federal agency or institution of higher
14 education of credit cards, to the extent
15 that such maximum dollar value does not
16 differentiate between issuers or between
17 payment card networks.

18 “(B) INCREASE IN MINIMUM DOLLAR
19 AMOUNT.—The Board may, by regulation pre-
20 scribed pursuant to section 553 of title 5,
21 United States Code, increase the amount of the
22 dollar value listed in subparagraph (A)(i)(II).

23 “(4) RULE OF CONSTRUCTION:—No provision
24 of this subsection shall be construed to authorize
25 any person—

1 “(A) to discriminate between debit cards
2 within a payment card network on the basis of
3 the issuer that issued the debit card; or

4 “(B) to discriminate between credit cards
5 within a payment card network on the basis of
6 the issuer that issued the credit card.

7 “(c) DEFINITIONS.—For purposes of this section, the
8 following definitions shall apply:

9 “(1) AFFILIATE.—The term ‘affiliate’ means
10 any company that controls, is controlled by, or is
11 under common control with another company.

12 “(2) DEBIT CARD.—The term ‘debit card’—

13 “(A) means any card, or other payment
14 code or device, issued or approved for use
15 through a payment card network to debit an
16 asset account (regardless of the purpose for
17 which the account is established), whether au-
18 thorization is based on signature, PIN, or other
19 means;

20 “(B) includes a general-use prepaid card,
21 as that term is defined in section 915(a)(2)(A);
22 and

23 “(C) does not include paper checks.

24 “(3) CREDIT CARD.—The term ‘credit card’ has
25 the same meaning as in section 103 .

1 “(4) DISCOUNT.—The term ‘discount’—

2 “(A) means a reduction made from the
3 price that customers are informed is the regular
4 price; and

5 “(B) does not include any means of in-
6 creasing the price that customers are informed
7 is the regular price.

8 “(5) ELECTRONIC DEBIT TRANSACTION.—The
9 term ‘electronic debit transaction’ means a trans-
10 action in which a person uses a debit card.

11 “(6) FEDERAL AGENCY.—The term ‘Federal
12 agency’ means—

13 “(A) an agency (as defined in section 101
14 of title 31, United States Code); and

15 “(B) a Government corporation (as defined
16 in section 103 of title 5, United States Code).

17 “(7) INSTITUTION OF HIGHER EDUCATION.—
18 The term ‘institution of higher education’ has the
19 same meaning as in 101 and 102 of the Higher
20 Education Act of 1965 (20 U.S.C. 1001, 1002).

21 “(8) INTERCHANGE TRANSACTION FEE.—The
22 term ‘interchange transaction fee’ means any fee es-
23 tablished, charged or received by a payment card
24 network for the purpose of compensating an issuer
25 for its involvement in an electronic debit transaction.

1 “(9) ISSUER.—The term ‘issuer’ means any
2 person who issues a debit card, or credit card, or the
3 agent of such person with respect to such card.

4 “(10) NETWORK FEE.—The term ‘network fee’
5 means any fee charged and received by a payment
6 card network with respect to an electronic debit
7 transaction, other than an interchange transaction
8 fee.

9 “(11) PAYMENT CARD NETWORK.—The term
10 ‘payment card network’ means an entity that di-
11 rectly, or through licensed members, processors, or
12 agents, provides the proprietary services, infrastruc-
13 ture, and software that route information and data
14 to conduct debit card or credit card transaction au-
15 thorization, clearance, and settlement, and that a
16 person uses in order to accept as a form of payment
17 a brand of debit card, credit card or other device
18 that may be used to carry out debit or credit trans-
19 actions.

20 “(d) ENFORCEMENT.—

21 “(1) IN GENERAL.—Compliance with the re-
22 quirements imposed under this section shall be en-
23 forced under section 918.

1 “(2) EXCEPTION.—Sections 916 and 917 shall
2 not apply with respect to this section or the require-
3 ments imposed pursuant to this section.”.

4 (b) AMENDMENT TO THE FOOD AND NUTRITION ACT
5 OF 2008.—Section 7(h)(10) of the Food and Nutrition
6 Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read
7 as follows:

8 “10 FEDERAL LAW NOT APPLICABLE.—Section
9 920 of the Electronic Fund Transfer Act shall not
10 apply to electronic benefit transfer or reimbursement
11 systems under this Act.”.

12 (c) AMENDMENT TO THE FARM SECURITY AND
13 RURAL INVESTMENT ACT OF 2002.—Section 4402 of the
14 Farm Security and Rural Investment Act of 2002 (7
15 U.S.C. 3007) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(f) FEDERAL LAW NOT APPLICABLE.—Section 920
18 of the Electronic Fund Transfer Act shall not apply to
19 electronic benefit transfer systems established under this
20 section.”.

21 (d) AMENDMENT TO THE CHILD NUTRITION ACT OF
22 1966.—Section 11 of the Child Nutrition Act of 1966 (42
23 U.S.C. 1780) is amended by adding at the end the fol-
24 lowing:

1 “(c) FEDERAL LAW NOT APPLICABLE.—Section 920
2 of the Electronic Fund Transfer Act shall not apply to
3 electronic benefit transfer systems established under this
4 Act or the Richard B. Russell National School Lunch Act
5 (42 U.S.C. 1751 et seq.).”.

Page 1639, after line 7, insert the following new section (and redesignate subsequent sections accordingly):

6 **SEC. 1078. REVERSE MORTGAGE STUDY AND REGULATIONS.**

7 (a) STUDY.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study
8 on reverse mortgage transactions.

10 (b) REGULATIONS.—

11 (1) IN GENERAL.—If the Bureau determines
12 through the study required under subsection (a) that
13 conditions or limitations on the reverse mortgage
14 transactions are necessary or appropriate for accomplishing the purposes and objectives of this title, including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of
15 funding investments, annuities, and other investment
16 products and the suitability of a borrower in obtaining a reverse mortgage for such purpose.

21 (2) IDENTIFIED PRACTICES AND INTEGRATED
22 DISCLOSURES.—The regulations prescribed under

1 paragraph (1) may, as the Bureau may so deter-
2 mine—

3 (A) identify any practice as unfair, decep-
4 tive, or abusive in connection with a reverse
5 mortgage transaction; and

6 (B) provide for an integrated disclosure
7 standard and model disclosures for reverse
8 mortgage transactions, consistent with section
9 4302(d), that combines the relevant disclosures
10 required under the Truth in Lending Act (15
11 U.S.C. 1601 et seq.) and the Real Estate Set-
12 tlement Procedures Act, with the disclosures re-
13 quired to be provided to consumers for Home
14 Equity Conversion Mortgages under section 255
15 of the National Housing Act.

16 (c) RULE OF CONSTRUCTION.—This section shall not
17 be construed as limiting the authority of the Bureau to
18 issue regulations, orders, or guidance that apply to reverse
19 mortgages prior to the completion of the study required
20 under subsection (a).

Page 1642, after line 21, insert the following new
section:

1 **SEC. 1079A REVIEW, REPORT, AND PROGRAM WITH RE-**
2 **SPECT TO EXCHANGE FACILITATORS.**

3 (a) REVIEW.—The Director shall review all Federal
4 laws and regulations relating to the protection of con-
5 sumers who use exchange facilitators for transactions pri-
6 marily for personal, family, or household purposes.

7 (b) REPORT.—Not later than 1 year after the des-
8 ignated transfer date of this subtitle, the Director shall
9 submit to Congress a report describing—

10 (1) recommendations for legislation to ensure
11 the appropriate protection of consumers who use ex-
12 change facilitators for transactions primarily for per-
13 sonal, family, or household purposes;

14 (2) recommendations for updating the regula-
15 tions of Federal departments and agencies to ensure
16 the appropriate protection of such consumers; and

17 (3) recommendations for regulations to ensure
18 the appropriate protection of such consumers.

19 (c) PROGRAM.—Not later than 2 years after the date
20 of the submission of the report under subsection (b), the
21 Bureau shall, consistent with subtitle B, propose regula-
22 tions or otherwise establish a program to protect con-
23 sumers who use exchange facilitators.

24 (d) EXCHANGE FACILITATOR DEFINED.—In this sec-
25 tion, the term “exchange facilitator” means a person
26 that—

1 (1) facilitates, for a fee, an exchange of like
2 kind property by entering into an agreement with a
3 taxpayer by which the exchange facilitator acquires
4 from the taxpayer the contractual rights to sell the
5 taxpayer's relinquished property and transfers a re-
6 placement property to the taxpayer as a qualified
7 intermediary (within the meaning of Treasury Regu-
8 lations section 1.1031(k)-1(g)(4)) or enters into an
9 agreement with the taxpayer to take title to a prop-
10 erty as an exchange accommodation titleholder
11 (within the meaning of Revenue Procedure 2000-37)
12 or enters into an agreement with a taxpayer to act
13 as a qualified trustee or qualified escrow holder
14 (within the meaning of Treasury Regulations section
15 1.1031(k)-1(g)(3));

16 (2) maintains an office for the purpose of solie-
17 iting business to perform the services described in
18 paragraph (1); or

19 (3) advertises any of the services described in
20 paragraph (1) or solicits clients in printed publica-
21 tions, direct mail, television or radio advertisements,
22 telephone calls, facsimile transmissions, or other
23 electronic communications directed to the general
24 public for purposes of providing any such services.

Page 1647, line 22, insert “and section 920 (as added by section 1076)”.

Page 1648, strike line 8 and all that follows through line 15 and insert the following:

1 (3) in section 904 (15 U.S.C. 1693b)—

2 (A) in subsection (a), by striking “(a)

3 PRESCRIPTION BY BOARD.—The Board shall

4 prescribe regulations to carry out the purposes

5 of this title.” and inserting the following:

6 “(a) PRESCRIPTION BY THE BUREAU AND THE

7 BOARD.—The Bureau and the Board shall prescribe regu-

8 lations to carry out the purposes of this title, except that

9 the Board shall have sole authority to prescribe regula-

10 tions to carry out the purposes of section 920.”; and

11 (B) by adding at the end the following new

12 subsection:

13 “(e) DEFERENCE.—No provision of this title may be

14 construed as altering, limiting, or otherwise affecting the

15 deference that a court affords to—

16 “(1) the Bureau in making determinations re-

17 garding the meaning or interpretation of any provi-

18 sion of this title for which the Bureau has authority

19 to prescribe regulations; or

1 “(2) the Board in making determinations re-
2 garding the meaning or interpretation of section
3 920.”.

Page 1650, line 24, strike “subtitle E.” and insert
“subtitle E, except that the Bureau shall not have au-
thority to enforce the requirements of section 920 or any
regulations prescribed by the Board under section 920.”

Page 1701, line 2, strike “The Truth in Lending
Act” and insert “(a) IN GENERAL.—The Truth in Lend-
ing Act”.

Page 1715, after line 14, insert the following new
subsections:

4 (b) INSTITUTIONAL CERTIFICATION REQUIRED.—
5 Section 128(e) of the Truth in Lending Act is amended—
6 (1) by striking paragraph (3) and inserting the
7 following new paragraph (3):

8 “(3) INSTITUTIONAL CERTIFICATION RE-
9 QUIRED.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), before a creditor may issue
12 any funds with respect to an extension of credit
13 described in paragraph (1), the creditor shall
14 obtain from the relevant institution of higher
15 education such institution’s certification—

1 “(i) of the enrollment status of the
2 borrower;

3 “(ii) of the borrower’s cost of attend-
4 ance at the institution as determined by
5 the institution under part F of title IV of
6 the Higher Education Act of 1965;

7 “(iii) of the difference between the
8 borrower’s cost of attendance and the bor-
9 rower’s estimated financial assistance re-
10 ceived under title IV of the Higher Edu-
11 cation Act of 1965 and other assistance
12 known to the institution, as applicable; and

13 “(iv) that the institution has—

14 “(I) informed the borrower—

15 “(aa) about the availability
16 of, and the borrower’s potential
17 eligibility for, Federal financial
18 assistance under this title, includ-
19 ing disclosing the terms, condi-
20 tions, and interest rates of Fed-
21 eral student loans;

22 “(bb) of the borrower’s abil-
23 ity to select a private educational
24 lender of the borrower’s choice;

1 “(cc) about the impact of a
2 proposed private education loan
3 on the borrowers’ potential eligi-
4 bility for other financial assist-
5 ance, including Federal financial
6 assistance under the Higher Edu-
7 cation Act of 1965; and

8 “(dd) about a borrower’s
9 right to accept or reject a private
10 education loan within the 30-day
11 period following a private edu-
12 cational lender’s approval of a
13 borrower’s application and about
14 a borrower’s 3-day right to cancel
15 altogether;

16 “(II) determined whether the
17 borrower has applied for and ex-
18 hausted the Federal financial assist-
19 ance available to the borrower under
20 the Higher Education Act of 1965
21 and informed the borrower accord-
22 ingly; and

23 “(III) counseled the borrower on
24 the borrower’s financial aid options.

1 “(B) FAILURE TO PROVIDE TIMELY CER-
2 TIFICATION.—A creditor may issue funds with
3 respect to an extension of credit described in
4 paragraph (1) without obtaining from the rel-
5 evant institution of higher education such insti-
6 tution’s certification if such institution fails to
7 provide such certification within 21 calendar
8 days or 15 business days, whichever comes first,
9 of the creditor’s request for such certification.”;
10 (2) by redesignating paragraphs (9), (10), and
11 (11) as paragraphs (10), (11), and (12), respec-
12 tively; and
13 (3) by inserting after paragraph (8) the fol-
14 lowing new paragraph (9):
15 “(9) PROVISION OF INFORMATION.—On or be-
16 fore the date a creditor issues any funds with re-
17 spect to an extension of credit described in para-
18 graph (1), the creditor shall notify the relevant insti-
19 tution of higher education, in writing, of the amount
20 of the extension of credit and the student on whose
21 behalf credit is extended. The form of such written
22 notification shall be subject to the regulations of the
23 Agency.”.
24 (c) REGULATIONS.—

1 (1) DEADLINE FOR REGULATIONS.—Not later
2 than 365 days after the date of enactment of this
3 Act, the Agency shall issue regulations in final form
4 to implement paragraphs (3) and (9) of section
5 128(e) of the Truth in Lending Act, as amended by
6 subsection (b). Such regulations shall become effec-
7 tive not later than 6 months after their date of
8 issuance.

9 (2) EFFECTIVE DATE.—The regulations in ef-
10 fect pursuant to section 128(e) of the Truth in
11 Lending Act as of the date of the enactment of this
12 Act shall remain in effect until the effective date of
13 the regulations issued under paragraph (1).

Page 1721, strike line 3 and all that follows through
page 1722, line 25.



HOUSE PROPOSED AMENDMENT TO TITLE XIV

Page 1782, line 23, strike “1 property in any 36-month period” and insert “3 properties in any 12-month period”.

Page 1812, strike line 7 and all that follows through page 1813, line 9, and insert the following:

1 “(ii) LOAN DEFINITION.—The fol-
2 lowing agencies shall, in consultation with
3 the Board, prescribe rules defining the
4 types of loans they insure, guarantee or
5 administer, as the case may be, that are
6 qualified mortgages for purposes of sub-
7 section (c)(2)(A), and such rules may re-
8 vise, add to, or subtract from the criteria
9 used to define a qualified mortgage under
10 subsection (c)(2)(A), upon a finding that
11 such rules are consistent with the purposes
12 of this section and section 129B, to pre-
13 vent circumvention or evasion thereof, or
14 to facilitate compliance with such sec-
15 tions—

1 “(I) The Department of Housing
2 and Urban Development, with regard
3 to mortgages insured under the Na-
4 tional Housing Act (12 U.S.C. 1707
5 et seq.);

6 “(II) The Secretary of Veterans
7 Affairs, with regard to a loan made or
8 guaranteed by the Secretary of Vet-
9 erans Affairs;

10 “(III) The Secretary of Agri-
11 culture, with regard loans guaranteed
12 by the Secretary of Agriculture pursu-
13 ant to 42 U.S.C. 1472(h); and

14 “(IV) The Rural Housing Serv-
15 ice, with regard to loans insured by
16 the Rural Housing Service.”.

Page 1921, after line 11, insert the following new
subsections (and redesignate subsequent subsections ac-
cordingly):

17 “(g) INTERIM FINAL REGULATIONS.—The Board
18 shall, for purposes of this section, prescribe interim final
19 regulations no later than 60 days after the date of enact-
20 ment of this section defining with specificity acts or prac-
21 tices that violate appraisal independence in the provision
22 of mortgage lending services for a consumer credit trans-

1 action secured by the principal dwelling of the consumer
2 or mortgage brokerage services for such a transaction and
3 defining any terms in this section or such regulations.

4 “(h) LIMITATIONS.—Nothing in this section shall
5 prohibit mortgage lenders, the Federal National Mortgage
6 Association, or the Federal Home Loan Mortgage Cor-
7 poration from accepting any appraisal report completed by
8 an appraiser selected, retained, or compensated by a mort-
9 gage loan originator licensed or registered in accordance
10 with section 1501 et seq. of the SAFE Mortgage Licensing
11 Act of 2008, so long as such mortgage loan originator cer-
12 tifies adherence to the appraisal independence require-
13 ments of subsection (b) and any regulations prescribed
14 thereunder.

15 “(i) CUSTOMARY AND REASONABLE FEE.—

16 “(1) IN GENERAL.—Lenders and their agents
17 shall compensate fee appraisers at a rate that is cus-
18 tomary and reasonable for appraisal services per-
19 formed in the market area of the property being ap-
20 praised. Evidence for such fees may be established
21 by objective third-party information, such as govern-
22 ment agency fee schedules, academic studies, and
23 independent private sector surveys. Fee studies shall
24 exclude assignments ordered by known appraisal
25 management companies.

1 “(2) FEE APPRAISER DEFINITION.—For pur-
2 poses of this section, the term ‘fee appraiser’ means
3 a person who is not an employee of the mortgage
4 loan originator or appraisal management company
5 engaging the appraiser and is—

6 “(A) a State licensed or certified appraiser
7 who receives a fee for performing an appraisal
8 and certifies that the appraisal has been pre-
9 pared in accordance with the Uniform Stand-
10 ards of Professional Appraisal Practice; or

11 “(B) a company not subject to the require-
12 ments of section 1124 of the Financial Institu-
13 tions Reform, Recovery, and Enforcement Act
14 of 1989 (12 U.S.C. 3331 et seq.) that utilizes
15 the services of State licensed or certified ap-
16 praisers and receives a fee for performing ap-
17 praisals in accordance with the Uniform Stand-
18 ards of Professional Appraisal Practice.

19 “(3) EXCEPTION FOR COMPLEX ASSIGN-
20 MENTS.—In the case of an appraisal involving a
21 complex assignment, the customary and reasonable
22 fee may reflect the increased time, difficulty, and
23 scope of the work required for such an appraisal and
24 include an amount over and above the customary
25 and reasonable fee for non-complex assignments.

1 “(j) SUNSET.—Effective on the date the interim final
2 regulations are promulgated pursuant to subsection (g),
3 the Home Valuation Code of Conduct announced by the
4 Federal Housing Finance Agency on December 23, 2008,
5 shall have no force or effect.”.

Page 1922, line 8, strike “and (f)” and insert “(f),
(h), and (i)”.

Page 1967, after line 2, insert the following new sections:

6 **SEC. 1495. EMERGENCY MORTGAGE RELIEF.**

7 (a) USE OF TARP FUNDS.—Using the authority
8 available under sections 101(a) and 115(a) of division A
9 of the Emergency Economic Stabilization Act of 2008 (12
10 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury
11 shall transfer to the Secretary of Housing and Urban De-
12 velopment \$3,000,000,000, and the Secretary of Housing
13 and Urban Development shall credit such amount to the
14 Emergency Homeowners’ Relief Fund, which such Sec-
15 retary shall establish pursuant to section 107 of the Emer-
16 gency Housing Act of 1975 (12 U.S.C. 2706), as such
17 Act is amended by this section, for use for emergency
18 mortgage assistance in accordance with title I of such Act.

1 (b) REAUTHORIZATION OF EMERGENCY MORTGAGE
2 RELIEF PROGRAM.—Title I of the Emergency Housing
3 Act of 1975 is amended—

4 (1) in section 103 (12 U.S.C. 2702)—

5 (A) in paragraph (2)—

6 (i) by striking “have indicated” and
7 all that follows through “regulation of the
8 holder” and insert “have certified”;

9 (ii) by striking “(such as the volume
10 of delinquent loans in its portfolio)”; and

11 (iii) by striking “, except that such
12 statement” and all that follows through
13 “purposes of this title”; and

14 (B) in paragraph (4), by inserting “or
15 medical conditions” after “adverse economic
16 conditions”;

17 (2) in section 104 (12 U.S.C. 2703)—

18 (A) in subsection (b), by striking “, but
19 such assistance” and all that follows through
20 the period at the end and inserting the fol-
21 lowing: “. The amount of assistance provided to
22 a homeowner under this title shall be an
23 amount that the Secretary determines is rea-
24 sonably necessary to supplement such amount
25 as the homeowner is capable of contributing to-

1 ward such mortgage payment, except that the
2 aggregate amount of such assistance provided
3 for any homeowner shall not exceed \$50,000.”;

4 (B) in subsection (d), by striking “interest
5 on a loan or advance” and all that follows
6 through the end of the subsection and inserting
7 the following: “(1) the rate of interest on any
8 loan or advance of credit insured under this
9 title shall be fixed for the life of the loan or ad-
10 vance of credit and shall not exceed the rate of
11 interest that is generally charged for mortgages
12 on single-family housing insured by the Sec-
13 retary of Housing and Urban Development
14 under title II of the National Housing Act at
15 the time such loan or advance of credit is made,
16 and (2) no interest shall be charged on interest
17 which is deferred on a loan or advance of credit
18 made under this title. In establishing rates,
19 terms and conditions for loans or advances of
20 credit made under this title, the Secretary shall
21 take into account a homeowner’s ability to
22 repay such loan or advance of credit.”; and

23 (C) in subsection (e), by inserting after the
24 period at the end of the first sentence the fol-
25 lowing: “Any eligible homeowner who receives a

1 grant or an advance of credit under this title
2 may repay the loan in full, without penalty, by
3 lump sum or by installment payments at any
4 time before the loan becomes due and pay-
5 able.”;

6 (3) in section 105 (12 U.S.C. 2704)—

7 (A) by striking subsection (b);

8 (B) in subsection (e)—

9 (i) by inserting “and emergency mort-
10 gage relief payments made under section
11 106” after “insured under this section”;
12 and

13 (ii) by striking “\$1,500,000,000 at
14 any one time” and inserting
15 “\$3,000,000,000”;

16 (C) by redesignating subsections (c), (d),
17 and (e) as subsections (b), (c), and (d), respec-
18 tively; and

19 (D) by adding at the end the following new
20 subsection:

21 “(e) The Secretary shall establish underwriting
22 guidelines or procedures to allocate amounts made avail-
23 able for loans and advances insured under this section and
24 for emergency relief payments made under section 106
25 based on the likelihood that a mortgagor will be able to

1 resume mortgage payments, pursuant to the requirement
2 under section 103(5).”;

3 (4) in section 107—

4 (A) by striking “(a)”; and

5 (B) by striking subsection (b);

6 (5) in section 108 (12 U.S.C. 2707), by adding
7 at the end the following new subsection:

8 “(d) COVERAGE OF EXISTING PROGRAMS.—The Sec-
9 retary shall allow funds to be administered by a State that
10 has an existing program that is determined by the Sec-
11 retary to provide substantially similar assistance to home-
12 owners. After such determination is made such State shall
13 not be required to modify such program to comply with
14 the provisions of this title.”;

15 (6) in section 109 (12 U.S.C. 2708)—

16 (A) in the section heading, by striking
17 “AUTHORIZATION AND”;

18 (B) by striking subsection (a);

19 (C) by striking “(b)”; and

20 (D) by striking “1977” and inserting
21 “2011”;

22 (7) by striking sections 110, 111, and 113 (12
23 U.S.C. 2709, 2710, 2712); and

24 (8) by redesignating section 112 (12 U.S.C.
25 2711) as section 110.

1 **SEC. 1496. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD**
2 **STABILIZATION PROGRAM.**

3 Using the authority made available under sections
4 101(a) and 115(a) of division A of the Emergency Eco-
5 nomic Stabilization Act of 2008 (12 U.S.C. 5211(a),
6 5225(a)), the Secretary of the Treasury shall transfer to
7 the Secretary of Housing and Urban Development
8 \$1,000,000,000, and the Secretary of Housing and Urban
9 Development shall use such amounts for assistance to
10 States and units of general local government for the rede-
11 velopment of abandoned and foreclosed homes, in accord-
12 ance with the same provisions applicable under the second
13 undesignated paragraph under the heading “Community
14 Planning and Development—Community Development
15 Fund” in title XII of division A of the American Recovery
16 and Reinvestment Act of 2009 (Public Law 111–5; 123
17 Stat. 217) to amounts made available under such second
18 undesignated paragraph, except as follows:

19 (1) Notwithstanding the matter of such second
20 undesignated paragraph that precedes the first pro-
21 viso, amounts made available by this section shall re-
22 main available until expended.

23 (2) The 3rd, 4th, 5th, 6th, 7th, and 15th pro-
24 visos of such second undesignated paragraph shall
25 not apply to amounts made available by this section.

1 (3) Amounts made available by this section
2 shall be allocated based on a funding formula for
3 such amounts established by the Secretary in ac-
4 cordance with section 2301(b) of the Housing and
5 Economic Recovery Act of 2008 (42 U.S.C. 5301
6 note), except that—

7 (A) notwithstanding paragraph (2) of such
8 section 2301(b), the formula shall be estab-
9 lished not later than 30 days after the date of
10 the enactment of this Act;

11 (B) the Secretary may not establish any
12 minimum grant amount or size for grants to
13 States;

14 (C) the Secretary may establish a min-
15 imum grant amount for direct allocations to
16 units of general local government located within
17 a State, which shall not exceed \$1,000,000; and

18 (D) each State and local government re-
19 ceiving grant amounts shall establish proce-
20 dures to create preferences for the development
21 of affordable rental housing for properties as-
22 sisted with amounts made available by this sec-
23 tion.

1 (4) Paragraph (1) of section 2301(c) of the
2 Housing and Economic Recovery Act of 2008 shall
3 not apply to amounts made available by this section.

4 (5) Section 2302 of the Housing and Economic
5 Recovery Act of 2008 shall not apply to amounts
6 made available by this section.

7 (6) The fourth proviso from the end of such
8 second undesignated paragraph shall be applied to
9 amounts made available by this section by sub-
10 stituting “2013” for “2012”.

11 (7) Notwithstanding section 2301(a) of the
12 Housing and Economic Recovery Act of 2008, the
13 term “State” means any State of the United States,
14 the District of Columbia, the Commonwealth of
15 Puerto Rico, the Commonwealth of the Northern
16 Mariana Islands, Guam, the Virgin Islands, Amer-
17 ican Samoa, and other territory or possession of the
18 United States for purposes of this section and title
19 III of division B of such Act, as applied to amounts
20 made available by this section.

21 (8)(A) None of the amounts made available by
22 this section shall be distributed to—

23 (i) any organization which has been con-
24 victed for a violation under Federal law relating
25 to an election for Federal office; or

1 (ii) any organization which employs appli-
2 cable individuals.

3 (B) In this paragraph, the term “applicable in-
4 dividual” means an individual who—

5 (i) is—

6 (I) employed by the organization in a
7 permanent or temporary capacity;

8 (II) contracted or retained by the or-
9 ganization; or

10 (III) acting on behalf of, or with the
11 express or apparent authority of, the orga-
12 nization; and

13 (ii) has been convicted for a violation
14 under Federal law relating to an election for
15 Federal office.

16 **SEC. 1497. LEGAL ASSISTANCE FOR FORECLOSURE-RE-**
17 **LATED ISSUES.**

18 (a) ESTABLISHMENT.—The Secretary of Housing
19 and Urban Development (hereafter in this section referred
20 to as the “Secretary”) shall establish a program for mak-
21 ing grants for providing a full range of foreclosure legal
22 assistance to low- and moderate-income homeowners and
23 tenants related to home ownership preservation, home
24 foreclosure prevention, and tenancy associated with home
25 foreclosure.

1 (b) COMPETITIVE ALLOCATION.—The Secretary shall
2 allocate amounts made available for grants under this sec-
3 tion to State and local legal organizations on the basis
4 of a competitive process. For purposes of this subsection
5 “State and local legal organizations” are those State and
6 local organizations whose primary business or mission is
7 to provide legal assistance.

8 (c) PRIORITY TO CERTAIN AREAS.—In allocating
9 amounts in accordance with subsection (b), the Secretary
10 shall give priority consideration to State and local legal
11 organizations that are operating in the 100 metropolitan
12 statistical areas (as that term is defined by the Director
13 of the Office of Management and Budget) with the highest
14 home foreclosure rates.

15 (d) LEGAL ASSISTANCE.—

16 (1) IN GENERAL.—Any State or local legal or-
17 ganization that receives financial assistance pursu-
18 ant to this section may use such amounts only to as-
19 sist—

20 (A) homeowners of owner-occupied homes
21 with mortgages in default, in danger of default,
22 or subject to or at risk of foreclosure; and

23 (B) tenants at risk of or subject to eviction
24 as a result of foreclosure of the property in
25 which such tenant resides.

1 (2) COMMENCE USE WITHIN 90 DAYS.—Any
2 State or local legal organization that receives finan-
3 cial assistance pursuant to this section shall begin
4 using any financial assistance received under this
5 section within 90 days after receipt of the assist-
6 ance.

7 (3) PROHIBITION ON CLASS ACTIONS.—No
8 funds provided to a State or local legal organization
9 under this section may be used to support any class
10 action litigation.

11 (4) LIMITATION ON LEGAL ASSISTANCE.—Legal
12 assistance funded with amounts provided under this
13 section shall be limited to mortgage-related default,
14 eviction, or foreclosure proceedings, without regard
15 to whether such foreclosure is judicial or nonjudicial.

16 (5) EFFECTIVE DATE.—Notwithstanding any
17 other provision of this Act, this subsection shall take
18 effect on the date of the enactment of this Act.

19 (e) LIMITATION ON DISTRIBUTION OF ASSIST-
20 ANCE.—

21 (1) IN GENERAL.—None of the amounts made
22 available under this section shall be distributed to—

23 (A) any organization which has been con-
24 victed for a violation under Federal law relating
25 to an election for Federal office; or

1 (B) any organization which employs appli-
2 cable individuals.

3 (2) DEFINITION OF APPLICABLE INDIVID-
4 UALS.—In this subsection, the term “applicable indi-
5 vidual” means an individual who—

6 (A) is—

7 (i) employed by the organization in a
8 permanent or temporary capacity;

9 (ii) contracted or retained by the or-
10 ganization; or

11 (iii) acting on behalf of, or with the
12 express or apparent authority of, the orga-
13 nization; and

14 (B) has been convicted for a violation
15 under Federal law relating to an election for
16 Federal office.

17 (f) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary
19 \$35,000,000 for each of fiscal years 2011 through 2014
20 for grants under this section.



HOUSE PROPOSED AMENDMENT TO SUBTITLE D OF TITLE IX

Page 1206, line 4, after “asset” insert “directly or indirectly”.

Page 1206, line 5, strike “(b) IN GENERAL.—” and insert the following:

1 (b) REGULATIONS REQUIRED.—

2 (1) IN GENERAL.—

Page 1206, after line 11, insert the following:

3 (2) RESIDENTIAL MORTGAGES.—Not later than
4 270 days after the date of the enactment of this sec-
5 tion, the Federal banking agencies, the Commission,
6 and the Secretary of Housing and Urban Develop-
7 ment shall jointly prescribe regulations to require
8 any securitizer to retain an economic interest in a
9 portion of the credit risk for any residential mort-
10 gage asset that the securitizer, through the issuance
11 of an asset-backed security, transfers, sells, or con-
12 veys to a third party.

Page 1206, strike line 19 through page 1207, line 18, and insert the following:

1 (B) require a securitizer to retain not less
2 than 5 percent of the credit risk for any asset
3 that is transferred, sold, or conveyed through
4 the issuance of an asset-backed security by the
5 securitizer, except that the securitizer can re-
6 tain less than 5 percent of the credit risk for
7 an asset that is transferred, sold, or conveyed
8 through the issuance of an asset-backed secu-
9 rity by the securitizer, if the originator of the
10 asset meets the underwriting standards pre-
11 scribed under paragraph (2)(B);

Page 1207, line 21, after the semicolon insert
“and”.

Page 1207, strike line 24 and all that follows
through page 1208, line 7.

Page 1208, strike line 10 and all that follows
through page 1209, line 5, and insert the following:

12 (E) establish appropriate standards for re-
13 tention of an economic interest with respect to
14 collateralized debt obligations, securities
15 collateralized by collateralized debt obligations,
16 and similar instruments collateralized by other
17 asset-backed securities; and

Page 1213, strike line 7 and insert the following:

1 (3) CERTAIN INSTITUTIONS AND PROGRAMS EX-
2 EMPT.—

3 (A) FARM CREDIT SYSTEM INSTITU-
4 TIONS.—A

Page 1213, after line 13, insert the following new
subparagraph:

5 (B) OTHER FEDERAL PROGRAMS.—This
6 section shall not apply to any residential, multi-
7 family, or health care facility mortgage loan
8 asset, or securitization based directly or indi-
9 rectly on such an asset, which is insured or
10 guaranteed by the United States or an agency
11 of the United States. For purposes of this sub-
12 section, the Federal National Mortgage Associa-
13 tion, the Federal Home Loan Mortgage Cor-
14 poration, and the Federal home loan banks
15 shall not be considered an agency of the United
16 States.

Page 1213, strike line 14 and all that follows
through page 1215, line 17.

Page 1216, after line 14, insert the following new
subsection (and redesignate the subsequent subsection ac-
cordingly):

1 “(h) AUTHORITY TO COORDINATE ON RULE-
2 MAKING.—The Chairperson of the Financial Stability
3 Oversight Council shall coordinate all joint rulemaking re-
4 quired under this section.”.

Page 1221, after line 12, insert the following new
section:

5 **SEC. 946. STUDY ON THE MACROECONOMIC EFFECTS OF**
6 **RISK RETENTION REQUIREMENTS.**

7 (a) STUDY REQUIRED.—The Chairman of the Finan-
8 cial Services Oversight Council shall carry out a study on
9 the macroeconomic effects of the risk retention require-
10 ments under this subtitle, and the amendments made by
11 this subtitle, with emphasis placed on potential beneficial
12 effects with respect to stabilizing the real estate market.
13 Such study shall include—

14 (1) an analysis of the effects of risk retention
15 on real estate asset price bubbles, including a retro-
16 spective estimate of what fraction of real estate
17 losses may have been averted had such requirements
18 been in force in recent years;

19 (2) an analysis of the feasibility of minimizing
20 real estate price bubbles by proactively adjusting the
21 percentage of risk retention that must be borne by
22 creditors and securitizers of real estate debt, as a
23 function of regional or national market conditions;

1 (3) a comparable analysis for proactively ad-
2 justing mortgage origination requirements;

3 (4) an assessment of whether such proactive ad-
4 justments should be made by an independent regu-
5 lator, or in a formulaic and transparent manner;

6 (5) an assessment of whether such adjustments
7 should take place independently or in concert with
8 monetary policy; and

9 (6) recommendations for implementation and
10 enabling legislation.

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 of the Financial Services Oversight Council
14 shall issue a report to the Congress containing any find-
15 ings and determinations made in carrying out the study
16 required under subsection (a).



HOUSE PROPOSED AMENDMENTS TO TITLE VI

Page 511, line 19, strike “title, a company” and insert the following:

1 title:

2 (1) COMMERCIAL FIRM.—A company

Page 512, after line 2, insert the following new paragraphs:

3 (2) NONBANK FINANCIAL COMPANY.—The term
4 “nonbank financial company” shall have the mean-
5 ing given such term under section 102.

6 (3) TRANSFER DATE.—The term “transfer
7 date” shall have the meaning given such term under
8 section 311(a).

Page 513, line 18, strike “trust bank” and all that follows through page 514, line 4, and insert the following:

9 trust bank—

10 (i) that—

11 (I) is in danger of default, as de-
12 termined by the appropriate Federal
13 banking agency;

1 (II) results from the merger or
2 whole acquisition of a commercial firm
3 that directly or indirectly controls the
4 industrial bank, credit card bank, or
5 trust bank in a bona fide merger with
6 or acquisition by another commercial
7 firm, as determined by the appro-
8 priate Federal banking agency; or

9 (III) results from an acquisition
10 of voting shares of a publicly traded
11 company that controls an industrial
12 bank, credit card bank, or trust bank,
13 if, after the acquisition, the acquiring
14 shareholder (or group of shareholders
15 acting in concert) holds less than 25
16 percent of any class of the voting
17 shares of the company; and

18 (ii) that has obtained all regulatory
19 approvals otherwise required for such
20 change of control under any applicable
21 Federal or State law, including section 7(j)
22 of the Federal Deposit Insurance Act (12
23 U.S.C. 1817(j)).

Page 520, line 4, strike “The” and insert “Subject to subtitle B of the Consumer Financial Protection Act of 2010, the”.

Page 521, strike lines 3 through 6 and insert the following:

- 1 (ii) monitor the compliance of the
- 2 bank holding company and the subsidiary
- 3 with—
- 4 (I) this Act;
- 5 (II) Federal laws that the Board
- 6 has specific jurisdiction to enforce
- 7 against the company or subsidiary;
- 8 and
- 9 (III) other than in the case of an
- 10 insured depository institution or func-
- 11 tionally regulated subsidiary, any
- 12 other applicable provisions of Federal
- 13 law.

Page 521, line 22, after “banking agency” insert “, the Securities Exchange Commission, the Commodity Futures Trading Commission,”.

Page 522, strike lines 11 through 13, and insert the following:

1 (1) in section 5(c)(5)(B) (12 U.S.C.
2 1844(c)(5)(B))—

3 (A) in clause (iii), by adding “or” after the
4 semicolon; and

5 (B) by striking clauses (iv) and (v) and in-
6 serting the following:

7 “(iv) an entity that is subject to regu-
8 lation by, or registration with, the Com-
9 modity Futures Trading Commission, with
10 respect to actions as a futures commission
11 merchant, commodity trading adviser, reg-
12 istered commodity pool operator, swap exe-
13 cution facility, swap data repository, swap
14 dealer, major swap participant, and activi-
15 ties that are incidental to such commod-
16 ities activities.”; and

Page 524, line 2, strike “\$25,000,000,000” and in-
sert “\$10,000,000,000”.

Page 524, line 8, strike “Board of Governors” and
insert “the Board’s”.

Page 526, line 18, strike “The” and insert “Subject
to subtitle B of the Consumer Financial Protection Act
of 2010, the”.

Page 527, strike lines 20 through 23 and insert the following:

1 “(ii) monitor the compliance of the
2 bank holding company and the subsidiary
3 with—
4 “(I) this Act;
5 “(II) Federal laws that the
6 Board has specific jurisdiction to en-
7 force against the company or sub-
8 sidiary; and
9 “(III) other than in the case of
10 an insured depository institution or
11 functionally regulated subsidiary, any
12 other applicable provisions of Federal
13 law.”.

Page 528, line 13, after “banking agency” insert “,
the Securities Exchange Commission, the Commodity Fu-
tures Trading Commission,”.

Page 529, line 12, strike “or”.

Page 529, line 18, strike the quotation marks and
following period and insert “; or”.

Page 529, after line 18, insert the following new
subclause:

1 “(III) a company described in
2 subsection (c)(9)(C) solely by virtue of
3 such company’s control of an inter-
4 mediate holding company established
5 pursuant to section 10A.”.

Page 530, strike line 1 and all that follows through
page 538, line 7, and insert the following:

6 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
7 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
8 **TION SUBSIDIARIES OF HOLDING COMPA-**
9 **NIES.**

10 (a) IN GENERAL.—The Federal Deposit Insurance
11 Act (12 U.S.C. 1811 et seq.) is amended by inserting after
12 section 25 the following new section:

13 **“SEC. 26. ASSURING CONSISTENT OVERSIGHT OF SUBSIDI-**
14 **ARIES OF HOLDING COMPANIES.**

15 “(a) DEFINITIONS.—For purposes of this section:

16 “(1) BOARD.—The term ‘Board’ means the
17 Board of Governors of the Federal Reserve System.

18 “(2) FUNCTIONALLY REGULATED SUB-
19 SIDIARY.—The term ‘functionally regulated sub-
20 sidiary’ has the same meaning as in section 5(c)(5)
21 of the Bank Holding Company Act.

22 “(3) LEAD INSURED DEPOSITORY INSTITU-
23 TION.—The term ‘lead insured depository institu-

tion’ has the same meaning as in section 2(o)(8) of the Bank Holding Company Act.

“(b) EXAMINATION REQUIREMENTS.—The Board shall examine the activities of a nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of a depository institution holding company that are permissible for the lead insured depository institution of the depository institution holding company in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company.

“(c) STATE COORDINATION.—

“(1) CONSULTATION AND COORDINATION.—If a nondepository institution subsidiary is supervised by a State bank supervisor or other State regulatory authority, the Board, in conducting the examinations required in subsection (b), shall consult and coordinate with such State regulator.

“(2) ALTERNATING EXAMINATIONS PERMITTED.—The examinations required under subsection (b) may be conducted in joint or alternating manner with a State regulator, if the Board determines that an examination of a nondepository insti-

1 tution subsidiary conducted by the State carries out
2 the purposes of this section.

3 “(d) APPROPRIATE FEDERAL BANKING AGENCY
4 BACKUP EXAMINATION AUTHORITY.—

5 “(1) IN GENERAL.—In the event examinations
6 required under subsection (b) are not conducted in
7 the same manner, subject to the same standards,
8 and with the same frequency as would be required
9 if such activities were conducted of the lead insured
10 depository institution of the depository institution
11 holding company, the appropriate Federal banking
12 agency for the lead insured depository institution
13 may recommend in writing (which shall include a
14 written explanation of the concerns giving rise to the
15 recommendation) that the Board perform the exam-
16 ination required under subsection (b).

17 “(2) EXAMINATION BY AN APPROPRIATE FED-
18 ERAL BANKING AGENCY.—If the Board does not, be-
19 fore the end of the 60-day period beginning on the
20 date on which the Board receives a recommendation
21 under paragraph (1), begin an examination as re-
22 quired under subsection (b) or provide an expla-
23 nation or plan to the appropriate Federal banking
24 agency making such recommendation responding to
25 the concerns raised by the appropriate Federal

1 banking agency for the lead insured depository insti-
2 tution, the appropriate Federal banking agency for
3 the lead insured depository institution may examine
4 the activities that are permissible for a depository
5 institution subsidiary conducted by such nondeposi-
6 tory institution subsidiary (other than a functionally
7 regulated subsidiary or a subsidiary of a depository
8 institution) of the depository institution holding
9 company as if the nondepository institution sub-
10 sidiary were an insured depository institution for
11 which the appropriate Federal banking agency of the
12 lead insured depository institution was the appro-
13 priate Federal banking agency, to determine whether
14 the activities—

15 “(A) present material safety and sound-
16 ness risks to any depository institution sub-
17 sidiary of the depository institution holding
18 company;

19 “(B) are conducted in accordance with ap-
20 plicable Federal law; and

21 “(C) are subject to appropriate systems for
22 monitoring and controlling the financial, oper-
23 ating, and other material risks of the activities
24 and protecting the depository institution sub-
25 sidiaries of the holding company.

1 “(3) AGENCY COORDINATION WITH THE
2 BOARD.—An appropriate Federal banking agency
3 that conducts an examination pursuant to paragraph
4 (2) shall coordinate examination of the activities of
5 nondepository institution subsidiaries described in
6 subsection (b) with the Board in a manner that—

7 “(A) avoids duplication;

8 “(B) shares information relevant to the su-
9 pervision of the depository institution holding
10 company;

11 “(C) achieves the objectives of subsection
12 (b); and

13 “(D) ensures that the depository institu-
14 tion holding company and the subsidiaries of
15 the depository institution holding company are
16 not subject to conflicting supervisory demands
17 by such agency and the Board.

18 “(4) FEE PERMITTED FOR EXAMINATION
19 COSTS.—An appropriate Federal banking agency
20 that conducts an examination or enforcement action
21 pursuant to this section may collect an assessment,
22 fee, or such other charge as the appropriate Federal
23 banking agency determines necessary or appropriate
24 to carry out the responsibilities of the appropriate

1 Federal banking agency in connection with such ex-
2 amination.

3 “(e) REFERRALS FOR ENFORCEMENT BY APPRO-
4 PRIATE FEDERAL BANKING AGENCY.—

5 “(1) RECOMMENDATION OF ENFORCEMENT AC-
6 TION.—The appropriate Federal banking agency for
7 the lead insured depository institution, based upon
8 its examination of a nondepository institution sub-
9 sidiary conducted pursuant to subsection (d), may
10 submit to the Board, in writing, a recommendation
11 that the Board take enforcement action against such
12 nondepository institution subsidiary, together with
13 an explanation of the concerns giving rise to the rec-
14 ommendation, if the appropriate Federal banking
15 agency determines (by a vote of its members, if ap-
16 plicable) that the activities of the nondepository in-
17 stitution subsidiary pose a material threat to the
18 safety and soundness of any insured depository insti-
19 tution subsidiary of the depository institution hold-
20 ing company.

21 “(2) BACK-UP AUTHORITY OF THE APPRO-
22 PRIATE FEDERAL BANKING AGENCY.—If, within the
23 60-day period beginning on the date on which the
24 Board receives a recommendation under paragraph
25 (1), the Board does not take enforcement action

1 against the nondepository institution subsidiary or
2 provide a plan for supervisory or enforcement action
3 that is acceptable to the appropriate Federal bank-
4 ing agency that made the recommendation pursuant
5 to paragraph (1), such agency may take the rec-
6 ommended enforcement action, in the same manner
7 as if the nondepository institution subsidiary were
8 an insured depository institution for which the agen-
9 cy was the appropriate Federal banking agency.

10 “(f) COORDINATION AMONG APPROPRIATE FEDERAL
11 BANKING AGENCIES.—Each Federal banking agency,
12 prior to or when exercising authority under subsection (d)
13 or (e) shall—

14 “(1) coordinate the examination of depository
15 institution holding companies and insured depository
16 institutions with the appropriate Federal banking
17 agency of such companies or institutions;

18 “(2) provide reasonable notice to, and consult
19 with, the appropriate Federal banking agency or
20 State regulatory agency of a depository institution
21 holding company or any subsidiary of such company
22 before commencing any examination of the company
23 or subsidiary under any provision of Federal law;

24 “(3) to the fullest extent possible—

1 “(A) rely on the examinations, inspections,
2 and reports of the appropriate Federal banking
3 agency; and

4 “(B) avoid duplication of examination ac-
5 tivities, reporting requirements, and requests
6 for information; and

7 “(C) ensure that the depository institution
8 holding company and the subsidiaries of the de-
9 pository institution holding company are not
10 subject to conflicting supervisory demands by
11 the appropriate Federal banking agencies.

12 “(g) CONSTRUCTION.—No provision of this section
13 shall be construed as limiting any authority of the Board,
14 the Corporation, or the Comptroller of the Currency under
15 any other provision of law.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall take effect on the transfer date.

Page 535, line 6, strike “The” and insert “Subject
to subtitle B of the Consumer Financial Protection Act
of 2010, the”.

Page 538, after line 24, insert the following new
subsection (and redesignate the subsequent subsection ac-
cordingly):

1 (b) HOME OWNERS' LOAN ACT AMENDMENT.—Sec-
2 tion 10(c)(2) of the Home Owners' Loan Act (12 U.S.C.
3 1467a(c)(2)) is amended by adding at the end the fol-
4 lowing new subparagraph:

5 “(H) Any activity that is permissible for a
6 financial holding company (as such term is de-
7 fined under section 2(p) of the Bank Holding
8 Company Act of 1956 (12 U.S.C. 1841(p)) to
9 conduct under section 4(k) of the Bank Holding
10 Company Act of 1956 if—

11 “(i) the savings and loan holding com-
12 pany meets all of the criteria to qualify as
13 a financial holding company, and complies
14 with all of the requirements applicable to a
15 financial holding company, under sections
16 4(l) and 4(m) of the Bank Holding Com-
17 pany Act and section 804(c) of the Com-
18 munity Reinvestment Act of 1977 (12
19 U.S.C. 2903(c)) as if the savings and loan
20 holding company was a bank holding com-
21 pany; and

22 “(ii) the savings and loan holding
23 company conducts the activity in accord-
24 ance with the same terms, conditions, and
25 requirements that apply to the conduct of

1 such activity by a bank holding company
2 under the Bank Holding Company Act of
3 1956 and the Board's regulations and in-
4 terpretations under such Act.”.

Page 551, strike lines 11 through 23 (and redesignate subsequent sections accordingly).

Page 552, line 13, after “to” insert “, or has received written notice from the Comptroller of the Currency that the Comptroller of the Currency is beginning the process to subject the national bank to”.

page 552, line 24, after “to” insert “, or has received written notice from a State bank supervisor or an appropriate Federal banking agency that the State bank supervisor or the appropriate Federal banking agency is beginning the process to subject such bank or savings association to”.

Page 553, line 13, after “to” insert “, or has received written notice from the Office of Thrift Supervision or the Comptroller of the Currency that the Office of Thrift Supervision or the Comptroller of the Currency is beginning the process to subject the national bank to”.

Page 553, after line 18, insert the following new subsection:

1 (d) EXCEPTION.—The amendments made by sub-
2 sections (a), (b), and (c) shall not apply to any conversion
3 of an insured depository institution if—

4 (1) the Federal banking agency that would be
5 the appropriate Federal banking agency after the
6 proposed conversion gives the appropriate Federal
7 banking agency or State bank supervisor that issued
8 the cease and desist order (or other formal enforce-
9 ment order) or memorandum of understanding, as
10 appropriate, written notice of the proposed conver-
11 sion including a plan to address the significant su-
12 pervisory matter in a manner that is consistent with
13 the safe and sound operation of the institution;

14 (2) within 30 days of receipt of the written no-
15 tice required under paragraph (1), the appropriate
16 Federal banking agency or State bank supervisor
17 that issued the cease and desist order (or other for-
18 mal enforcement order) or memorandum of under-
19 standing, as appropriate, does not object to the con-
20 version or the plan to address the significant super-
21 visory matter; and

22 (3) after conversion of the insured depository
23 institution, the appropriate Federal banking agency
24 after the conversion implements such plan.

Page 557, strike lines 1 through 14 and insert the following (and redesignate the subsequent subsection accordingly):

1 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS.**

2 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
3 NIES.—Section 5(b) of the Bank Holding Company Act
4 of 1956 (12 U.S.C. 1844(b)) is amended—

5 (1) by inserting after “orders” the following: “,
6 including regulations and orders relating to the cap-
7 ital requirements for bank holding companies,”; and

8 (2) by adding at the end the following: “In es-
9 tablishing capital regulations pursuant to this sub-
10 section, the Board shall seek to make such require-
11 ments countercyclical, so that the amount of capital
12 required to be maintained by a company increases in
13 times of economic expansion and decreases in times
14 of economic contraction, consistent with the safety
15 and soundness of the company.”.

16 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
17 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
18 Loan Act (12 U.S.C. 1467a(g)(1)) is amended—

19 (1) by inserting after “orders” the following: “,
20 including regulations and orders relating to capital
21 requirements for savings and loan holding compa-
22 nies,”; and

1 (2) by inserting at the end the following: “In
2 establishing capital regulations pursuant to this sub-
3 section, the Director shall seek to make such re-
4 quirements countercyclical so that the amount of
5 capital required to be maintained by a company in-
6 creases in times of economic expansion and de-
7 creases in times of economic contraction, consistent
8 with the safety and soundness of the company.”.

9 (c) CAPITAL LEVELS OF INSURED DEPOSITORY IN-
10 STITUTIONS.—Section 38 of the Federal Deposit Insur-
11 ance Act (12 U.S.C. 1831o) is amended by adding at the
12 end the following new subsection:

13 “(p) COUNTERCYCLICAL CAPITAL STANDARDS.—
14 Each appropriate Federal banking agency shall seek to
15 make the capital standards required under this section or
16 other provisions of Federal law for insured depository in-
17 stitutions countercyclical so that the amount of capital re-
18 quired to be maintained by an insured depository institu-
19 tion increases in times of economic expansion and de-
20 creases in times of economic contraction, consistent with
21 the safety and soundness of the insured depository institu-
22 tion.”.

Page 560, beginning on line 16, strike “subpara-
graphs (D), (F), or (H)” and insert “subparagraph (D)”.

Page 560, beginning on line 21, strike “subparagraphs (D), (F), or (H)” and insert “subparagraph (D)”.

Page 566, line 11, strike “institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))” and insert “depository institution”.

Page 568, strike lines 14 through 17 (and redesignate the subsequent subsection accordingly).

Page 583, beginning on line 17, strike “supervised by the Board under title I of the Restoring American Financial Stability Act of 2010”.

Page 594, line 23, strike “Section” and insert the following:

1 (a) IN GENERAL.—Section

Page 595, line 7, before “notice” insert “and the Board of Governors of the Federal Reserve System”.

Page 595, line 16, after “agency” insert “and the Board of Governors of the Federal Reserve System”.

Page 595, line 20, after “agency” insert “and the Board of Governors of the Federal Reserve System”.

Page 597, line 10, strike “and”.

Page 597, line 17, strike the period and insert “; and”.

Page 597, after line 17, insert the following new clause:

1 “(iii) the mutual holding company
2 has, prior to December 1, 2009—
3 “(I) reorganized into a mutual
4 holding company under subsection (o);
5 “(II) issued minority stock either
6 from its mid-tier stock holding com-
7 pany or its subsidiary stock savings
8 association; and
9 “(III) waived dividends it had a
10 right to receive from the subsidiary
11 savings association.”.

Page 597, line 19, strike “Board” and insert “appropriate Federal banking agency”.

Page 597, line 25, strike “and has” and insert “, has”.

Page 598, line 4, after “company” insert “, and has waived dividends it had a right to receive from a subsidiary savings association”.

Page 598, after line 8, insert the following new subsection:

1 (b) **EFFECTIVE DATE.**—The amendment made by
2 subsection (a) shall take effect on the transfer date.

Page 598, after line 8, insert the following new sections:

3 **SEC. 624. INTERMEDIATE HOLDING COMPANIES.**

4 (a) **IN GENERAL.**—The Home Owners’ Loan Act is
5 amended by inserting after section 10 the following new
6 section:

7 **“SEC. 10A. INTERMEDIATE HOLDING COMPANIES.**

8 “(a) **REQUIREMENT.**—A company described in section
9 10(c)(9)(C) that is also a commercial company as defined
10 in section 602 of the Restoring American Financial
11 Stability Act of 2010 shall be required to form or designate
12 an intermediate holding company which is a savings
13 and loan holding company.

14 “(b) **CONDUCT OF ACTIVITIES.**—A company that is
15 required to form an intermediate holding company shall
16 conduct all such activities which are permissible for a savings
17 and loan holding company formed after the date of
18 the enactment of the Gramm-Leach-Bliley Act, as determined
19 under section 10, through such intermediate holding
20 company, other than—

1 “(1) internal financial activities conducted for
2 such company or any affiliate, including, but not
3 limited to internal treasury, investment, and em-
4 ployee benefit functions, provided that with respect
5 to any internal financial activity engaged in for the
6 company or an affiliate and a nonaffiliate during the
7 year prior to date of enactment, the company (or an
8 affiliate not a subsidiary of the intermediate com-
9 pany) may continue to engage in that activity so
10 long as at least $\frac{2}{3}$ of the assets or $\frac{2}{3}$ of the reve-
11 nues generated from the activity are from or attrib-
12 utable to the company or an affiliate, subject to re-
13 view by the Board to determine whether engaging in
14 such activity presents undue risk to the intermediate
15 company or undue systemic risk; and

16 “(2) financial activities involving the provision
17 of credit for the purchase or lease of products or
18 services from an affiliate or for the purchase or lease
19 of products produced by an affiliate of such inter-
20 mediate holding company that is not a subsidiary of
21 such intermediate holding company, in accordance
22 with regulations prescribed by or orders issued by
23 the Board, pursuant to this section.

24 “(c) RULES AND EXEMPTIONS.—In addition to any
25 other authority of the Board, the Board shall prescribe

1 rules and regulations or issue orders providing for the es-
2 tablishment and registration of intermediate holding com-
3 panies and shall provide exemptions from the require-
4 ments of this section (including an order in response to
5 a request from an affected company), including, but not
6 limited to, exemptions—

7 “(1) with respect to the requirement to conduct
8 such activities which are permissible for a savings
9 and loan holding company formed after the date of
10 the enactment of the Gramm-Leach-Bliley Act, other
11 than financial activities conducted for such company
12 or any affiliate, including any financial activity en-
13 gaged in for both the company or an affiliate and a
14 nonaffiliate and financial activities involving the pro-
15 vision of credit for the purchase or lease of products
16 or services from an affiliate or for the purchase or
17 lease of products produced by an affiliate of such in-
18 termediate holding company that is not a subsidiary
19 of such intermediate holding company, through such
20 intermediate holding company, if the Board makes a
21 finding that such exemption—

22 “(A)(i) would facilitate the extension of
23 credit to individuals, households, and busi-
24 nesses; or

1 “(ii) would allow for greater efficiency, im-
2 proved customer service, or other public bene-
3 fits in the conduct of financial activities by af-
4 fected companies;

5 “(B) would not threaten the safety and
6 soundness of the intermediate holding company,
7 or of any insured depository institution or other
8 subsidiary of the intermediate holding company;

9 “(C) would not increase systemic risk or
10 threaten the stability of the overall financial
11 system;

12 “(D) would not, as applied to the activities
13 that are the subject of the rule, order or re-
14 quest, result in substantially lessening competi-
15 tion, or to tend to create a monopoly, or which
16 in any other manner would be in restraint of
17 trade, unless the Board finds that the anti-
18 competitive effects are outweighed in the public
19 interest by the probable effect of the exemption
20 in meeting the convenience and needs of the
21 community to be served; and

22 “(E) would meet the financial and mana-
23 gerial standards for financial holding companies
24 described in subparagraphs (A) and (B) of sec-

1 tion 4(j)(4) of the Bank Holding Company Act
2 of 1956; and

3 “(2) from the affiliate transaction requirements
4 of subsection (f), including but not limited to exemp-
5 tions that would facilitate extensions of credit to un-
6 affiliated persons for the personal, household, or
7 business purposes of such unaffiliated persons, un-
8 less the Board makes a finding that such exemp-
9 tion—

10 “(A) is not consistent with the purposes of
11 section 23A and section 23B of the Federal Re-
12 serve Act;

13 “(B) would threaten the safety and sound-
14 ness of the intermediate holding company, or
15 any insured depository institution or other sub-
16 sidiary of the intermediate holding company;

17 “(C) would increase systemic risk or
18 threaten the stability of the overall financial
19 system;

20 “(D) would not, as applied to the activities
21 that are the subject of the rule, order or re-
22 quest result in substantially lessening competi-
23 tion, or to tend to create a monopoly, or which
24 in any other manner would be in restraint of
25 trade, unless the Board finds that the anti-

1 competitive effects are outweighed in the public
2 interest by the probable effect of the exemption
3 in meeting the convenience and needs of the
4 community to be served; or

5 “(E) would permit an unfair, deceptive,
6 abusive, or unsafe-and-unsound act or practice.

7 “(d) PARENT COMPANY REPORTS.—The Board may,
8 from time to time, require reports under oath from a com-
9 pany that controls an intermediate holding company, and
10 appropriate officers or directors of such company, solely
11 for purposes of ensuring compliance with the provisions
12 of this section (including assessing the company’s ability
13 to serve as a source of financial strength pursuant to sub-
14 section (j)) and enforcing such compliance.

15 “(e) LIMITED PARENT COMPANY ENFORCEMENT.—

16 “(1) IN GENERAL.—In addition to any other
17 power of the Board, the Board may enforce compli-
18 ance with the provisions of this subsection which are
19 applicable to any company that controls an inter-
20 mediate holding company under section 8 of the
21 Federal Deposit Insurance Act and such company or
22 depository institution shall be subject to such section
23 (for such purposes) in the same manner and to the
24 same extent as if such company were a savings and
25 loan holding company.

1 “(2) APPLICATION OF OTHER ACT.—Any viola-
2 tion of this subsection by any company that controls
3 an intermediate holding company may also be treat-
4 ed as a violation of the Federal Deposit Insurance
5 Act for purposes of paragraph (1).

6 “(3) NO EFFECT ON OTHER AUTHORITY.—No
7 provision of this subsection shall be construed as
8 limiting any authority of the Board or any other
9 Federal agency under any other provision of law.

10 “(f) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—

11 “(1) SECTION 23A AND 23B APPLICABILITY.—

12 “(A) IN GENERAL.—Transactions between
13 an intermediate holding company (or any
14 nonbank subsidiary thereof) and any affiliate
15 not controlled by the intermediate holding com-
16 pany shall be subject to the restrictions and
17 limitations contained in section 23A and section
18 23B of the Federal Reserve Act as if the inter-
19 mediate holding company were a member bank,
20 provided, that a transaction that otherwise
21 would be a covered transaction shall not be a
22 covered transaction if the transaction is in con-
23 nection with the bona fide acquisition or lease
24 by an unaffiliated person of assets, goods or

1 services but shall be subject to review under
2 section 23A(f)(1) of such Act.

3 “(B) COVERED TRANSACTIONS.—A deposi-
4 tory institution controlled by an intermediate
5 holding company may not engage in a covered
6 transaction (as defined in section 23A(b)(7) of
7 the Federal Reserve Act) with any affiliate that
8 is not the intermediate holding company or a
9 subsidiary of the intermediate holding company;
10 provided that, for purposes of the prohibition, a
11 transaction that otherwise would be a covered
12 transaction shall not be a covered transaction if
13 the transaction is in connection with the bona
14 fide acquisition or lease by an unaffiliated per-
15 son of assets, goods or services, but shall be
16 subject to review under section 23A(f)(1) of the
17 Federal Reserve Act.

18 “(2) RULES OF CONSTRUCTION.—No provision
19 of this section shall be construed as—

20 “(A) exempting any subsidiary insured de-
21 pository institution of an intermediate holding
22 company from compliance with section 23A or
23 23B of the Federal Reserve Act with respect to
24 each affiliate of such institution (as defined in
25 section 23A or 23B of the Federal Reserve

1 Act), including any affiliate that is the inter-
2 mediate holding company or subsidiary of the
3 intermediate holding company; or

4 “(B) exempting any subsidiary savings as-
5 sociation from compliance with section 11.

6 “(g) TYING PROVISIONS.—A company that directly
7 or indirectly controls an intermediate holding company
8 shall be—

9 “(1) treated as a bank holding company for
10 purposes of section 106 of the Bank Holding Com-
11 pany Act Amendments of 1970 and section 22(h) of
12 the Federal Reserve Act and any regulation pre-
13 scribed under any such section; and

14 “(2) subject to the restrictions of section 106 of
15 the Bank Holding Company Act Amendments of
16 1970, in connection with any transaction involving
17 the products or services of such company or affiliate
18 and those of a bank affiliate, treated as if such com-
19 pany or affiliate were a bank holding company and
20 such bank were a subsidiary of a bank holding com-
21 pany.

22 “(h) FINANCIAL HOLDING COMPANY REQUIRE-
23 MENTS.—An intermediate holding company shall be sub-
24 ject to—

1 “(1) the conditions for engaging in expanded fi-
2 nancial activities in section 4(l) of the Bank Holding
3 Company Act of 1956; and

4 “(2) the provisions applicable to financial hold-
5 ing companies that fail to meet certain requirements
6 in section 4(m) of the Bank Holding Company Act
7 of 1956.

8 “(i) INDEPENDENCE OF INTERMEDIATE HOLDING
9 COMPANY.—

10 “(1) No less than 25 percent of the members
11 of the board of directors of an intermediate holding
12 company, and each subsidiary of an intermediate
13 holding company, shall be independent of the parent
14 company of the intermediate holding company and
15 any subsidiary of such parent company. For pur-
16 poses of this section, a director shall be independent
17 of the parent company if such person is not cur-
18 rently serving, and has not within the previous 2-
19 year period served, as a director, officer, or employee
20 of any affiliate of the intermediate holding company
21 that is not a subsidiary of the intermediate holding
22 company.

23 “(2) No executive officer of an intermediate
24 holding company or any subsidiary of an inter-
25 mediate holding company may serve as a director,

1 officer, or employee of an affiliate of the inter-
2 mediate holding company that is not a subsidiary of
3 the intermediate holding company.

4 “(3) The Board shall issue regulations that re-
5 quire effective legal and operational separation of
6 the functions of an intermediate holding company
7 from its affiliates that are not subsidiaries of such
8 intermediate holding company, provided, however
9 that such rules shall not require operational separa-
10 tion of internal functions including, but not limited
11 to, human resources management, employee benefit
12 plans, and information technology.

13 “(j) SOURCE OF STRENGTH.—A company that di-
14 rectly or indirectly controls an intermediate holding com-
15 pany shall serve as a source of financial strength to its
16 subsidiary intermediate holding company.

17 “(k) PROHIBITION ON CERTAIN ACTIVITIES.—An in-
18 termediate holding company shall be prohibited from con-
19 ducting any nonbanking activities or investing in any
20 nonbank companies other than those permissible for a sav-
21 ings and loan holding company formed after the date of
22 the enactment of the Gramm-Leach-Bliley Act, unless the
23 Board specifically determines otherwise in accordance with
24 subsection (c).

1 “(l) RULE OF CONSTRUCTION.—For purposes of this
2 section, designation of an already established intermediate
3 company that will serve as the intermediate holding com-
4 pany shall satisfy the requirement to establish an inter-
5 mediate holding company, provided that such existing in-
6 termediate holding company complies with all other provi-
7 sions applicable to an intermediate holding company.

8 “(m) DEFINITIONS.—For purposes of this section:

9 “(1) BOARD.—The term ‘Board’ means the
10 Board of Governors of the Federal Reserve System.

11 “(2) INSURED DEPOSITORY INSTITUTION.—The
12 term ‘insured depository institution’ has the mean-
13 ing given such term under section 3 of the Federal
14 Deposit Insurance Act.

15 “(3) SAVINGS AND LOAN HOLDING COMPANY.—
16 The term ‘savings and loan holding company’ has the
17 meaning given such term under section
18 10(a)(1)(D).”.

19 “(c) CLERICAL AMENDMENT.—The table of contents
20 for the Home Owners’ Loan Act is amended by inserting
21 after the item related to section 10 the follow new item:

“10A. Intermediate holding companies.”.

22 **SEC. 625. INTEREST-BEARING TRANSACTION ACCOUNTS**
23 **AUTHORIZED.**

24 “(a) REPEAL OF PROHIBITION ON PAYMENT OF IN-
25 TEREST ON DEMAND DEPOSITS.—

1 (1) FEDERAL RESERVE ACT.—Section 19(i) of
2 the Federal Reserve Act (12 U.S.C. 371a) is amend-
3 ed to read as follows:

4 “(i) [Repealed]”.

5 (2) HOME OWNERS’ LOAN ACT.—The first sen-
6 tence of section 5(b)(1)(B) of the Home Owners’
7 Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by
8 striking “savings association may not—” and all
9 that follows through “(ii) permit any” and inserting
10 “savings association may not permit any”.

11 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
12 tion 18(g) of the Federal Deposit Insurance Act (12
13 U.S.C. 1828(g)) is amended to read as follows:

14 “(g) [Repealed]”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall take effect at the end of the 1-year
17 period beginning on the date of the enactment of this Act.

18 **SEC. 626. CREDIT CARD BANK SMALL BUSINESS LENDING.**

19 Section 2(c)(2)(F)(v) of the Bank Holding Company
20 Act is amended by inserting before the period the fol-
21 lowing: “, other than credit card loans that are made to
22 businesses that meet the criteria for a small business con-
23 cern to be eligible for business loans under regulations es-

1 tablished by the Small Business Administration under
2 part 121 of title 13, Code of Federal Regulations”.



1. Page 599, line 3: strike “).” and insert “, including any modification of the meanings under Section 721(b) of this Act.”
2. Page 599: strike lines 5-18 and insert the following:
“(a) Consultation.—
“(1) CFTC.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the Prudential Regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.
“(2) SEC.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the Prudential Regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.”
3. Page 599, line 25: strike “paragraph (1)” and insert “paragraphs (1) and (2)”
4. Page 601, lines 12-20: strike all
5. Page 604, lines 1 and 15: strike “advertising and”
6. Page 606, line 22 through Page 607, line 17: strike all and resequence subsequent subsections
7. Page 607, line 18: strike “DEFINITIONS.” and insert “JOINT RULEMAKING.—(1)”
8. Page 607, line 21: insert ““(A)” after “to”
9. Page 607, line 25: strike the period and insert the following:
“;(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.”

Page 608, after line 16, insert the following:

“(h) RULES AND REGISTRATION BEFORE FINAL EFFECTIVE DATES.—Beginning on the date of enactment of this Act and regardless of the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act.

Provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.”

Page 608, line 17-Page 609, line 2: strike all and insert the following

“SEC. 713. PORTFOLIO MARGING CONFORMING CHANGES

“(a) Add a new subparagraph (C) to section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) as follows:

“(C) (i) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to section 15(b)(1) of this title and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.”

(b) Add a new subsection (h) to section 4d of the Commodity Exchange Act (7 U.S.C. 6d) as follows:

“(h) Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 4(c) of this Act or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section

4f(a)(1) of this Act and also registered as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934, hold in a portfolio margining account carried as a securities account subject to section 15(c)(3) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products”

(c) Amend section 20 of the Commodity Exchange Act (7 U.S.C. 24) by adding at the end a new paragraph (c) to read as follows:

“(c) The Commission shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.”

10. Page 621, line 21: at the end insert the following:

“SEC. 719. STUDIES

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

- (A) commercial users and traders of derivatives;
- (B) derivative clearing houses, exchanges and electronic trading platforms;
- (C) trade repositories and regulator investigations of market activities; and
- (D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) INTERNATIONAL SWAP REGULATION.—(1) In General.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—

- (i) swap regulation in the United States, Asia, and Europe; and
- (ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized

(2) Report.—Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) STABLE VALUE CONTRACTS.—(1) DETERMINATION.—

(A) STATUS.— No later than 15 months after the enactment of this act, the United States Securities and Exchange Commission and the United States Commodity Futures Trading Commission jointly shall conduct a study to determine whether stable value contracts falls within the definition of a swap. In making this determination, the Commissions jointly may consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

(B) REGULATIONS. — If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption from the definition of swap is appropriate and in the public interest for stable value contracts. Until such determination, the requirements of this Title shall not apply to stable value contracts.

(C) LEGAL CERTAINTY.—Stable value contracts in effect prior to a determination in subparagraph (B) shall not be considered swaps.

(2) DEFINITION.— For the purposes of this subsection, “stable value contract” means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in a defined contribution plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974), an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).

SEC. 720. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the two agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section,

negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information."

11. Page 622, strike lines 9 through 12 and insert the following:

“(2) APPROPRIATE FEDERAL BANKING AGENCY.—For purposes of this title, the term ‘appropriate Federal banking agency’—

“(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C.1813); and

“(B) is the Board in the case of a noninsured State bank.”

12. Page 622, line 24 through Page 623, line 13: strike all and insert the following:

“‘pant’ means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

“(i) the solicitation or acceptance of swaps; or

“(ii) the supervision of any person or persons so engaged.

13. Page 636, lines 10-22: strike all and insert “excluding positions held for hedging or mitigating commercial risk; or”

14. Page 637, lines 3-8: strike all from “entity,” through “goods,” and insert “entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking regulator; and”

15. Page 637, line 20: at the end insert the following:

“In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.”

16. Page 638, line 7 through Page 639, line 15: strike all and insert the following:

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System;

“(ii) a State-chartered branch or agency of a foreign bank;

“(iii) any foreign bank which does not operate an insured branch; or

“(iv) any organization operating under section 25A of the Federal Reserve Act or having an agreement with the Board under section 225 of the Federal Reserve Act;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a national bank;

“(ii) a federally chartered branch or agency of a foreign bank; or

“(iii) any Federal savings association;

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- “(i) a State-chartered bank that is not a member of the Federal Reserve System; or
- “(ii) any State savings association;”

17. Page 639, line 21: before the period insert the following: “; and

“(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992”

18. Page 646, line 10: insert “(1)” after “(a)”

19. Page 646, line 17: insert “(11)” after “(a)”

20. Page 647, lines 5-7: strike all after “based” and insert “swap”

21. Page 648, line 1-16: strike all

22. Page 648, line 17 through Page 651, line 11: strike all

23. Page 651, lines 14-17: strike all and insert “lects and maintains information or records with respect to transactions or positions in, or the terms and conditions or, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.”

24. Page 652, lines 1-3: strike all and insert the following:

““(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or”

25. Page 652, line 15: strike “buys or sells” and insert “enters into”

26. Page 652, line 18: at the end insert the following:

““(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.”

27. Page 652, line 21, strike “multiple”

28. Page 652, lines 23 & 24, strike “that are open to multiple participants”

29. Page 653, line 1, strike “trading” and insert “electronic trade execution or voice brokerage”

30. Page 658, line 3: after “section 5” insert “or a swap execution facility pursuant to section 5h”

31. Page 659, line 16 through Page 661 line 13: strike all and insert the following:

“(e) FERC.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

“(G)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

“(I) not executed, traded, or cleared on a registered entity or trading facility; or

“(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).

“(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

“(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

“(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).”.

32. Page 662, line 14: at end insert the following:

“(d) Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

33. Page 663, line 25 through Page 681, line 8: strike all and insert the following:

“(1) IN GENERAL.—

“(A) Standard for clearing.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(iii) that the swap is required to be cleared.

“(B) Open access.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

“(i) prescribe that all swaps (but not contracts for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for non-discriminatory clearing of a swap (but not a contract for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

“(2) Commission review.—

“(A) Commission-initiated review.—

“(i) The Commission on an ongoing basis shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

“(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

“(B) Swap submissions.—

“(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

“(ii) Any swap or group, category, type or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

“(iii) The Commission shall—

“(I) make available to the public submissions received under clauses (i) and (ii);

“(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

“(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

“(C) Deadline.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

“(D) Determination.—

“(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

“(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

“(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

“(IV) The effect on competition, including appropriate fees and charges applied to clearing.

“(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

“(iii) In making a determination under subparagraph (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(E) Rules.—Not later than 1 year after the date of the enactment of the this subsection, the Commission shall adopt rules for a derivatives clearing organization’s submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

“(F) Effect on Authority.—Nothing in this paragraph shall authorize the Commission to require a derivatives clearing organization to list for clearing, a swap, group, category, type or class of swaps.

“(3) Stay of clearing requirement.—

“(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

“(B) Deadline.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) Determination.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

“(D) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization’s clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.

“(4) Prevention of evasion.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

“(5) Reporting transition rules.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and

“(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

“(i) 90 days after such effective date; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(6) Clearing transition rules.—

“(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

“(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

“(7) Exceptions.—

“(A) In general.—The requirements of paragraph (1)(A) shall not apply to a swap if one of the counterparties to the swap—

“(i) is not a financial entity;

“(ii) is using swaps to hedge or mitigate commercial risk, including operating and balance sheet risk; and

“(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

“(B) Abuse of exception.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

“(C) Option to clear.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

“(D)(i) Financial Entity Definition.—For the purposes of this paragraph, a financial entity is defined as—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) a commodity pool;

“(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

“(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(VIII) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956.

“(ii) Exclusion.— The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including

“(I) depository institutions with total assets of \$10,000,000,000 or less;

“(II) farm credit system institutions with total assets of \$10,000,000,000 or less;

or

“(III) credit unions with total assets of \$10,000,000,000 or less.

“(E) Treatment of Affiliates.—“(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a–3(c));

“(VI) a commodity pool; or

“(VII) a bank holding company with over \$50,000,000,000 in consolidated assets; or

“(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

“(8) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

“(i) execute the transaction on a board of trade designated as a contract market under section 5; or

“(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).”

34. Page 681, line 12: strike “AUDIT” and insert “BY BOARD after “APPROVAL”

35. Page 681, line 14: strike “trade” and insert “execute”

36. Page 681, line 20-21: strike “the issuer’s audit committee” and insert “an appropriate committee of the issuer’s board or governing body”

37. Page 685, line 12: strike “a swap customer” and insert “swap customers”

38. Page 685, lines 15-16: strike “1 or more” and insert “account or”

39. Page 686, lines 12-13: strike “customer” and insert “customers”

40. Page 686, line 15: strike “as provided in this section” and insert “in customer accounts”

41. Page 693, lines 3-12: strike all, resequence subsequently added subsections

42. Page 694, line 9. at the end insert the following:

“(3) The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).”

43. Page 700, line 1: strike “and” and insert “or”

44. Page 710, line 23: strike “support the objectives” and insert “permit the consideration of the views”

45. Page 712, lines 12-16: strike all and add “.” at end of line 11

46. Page 714, lines 1-2: strike “3(a)(78) of the Securities Exchange Act” and insert “1a(47)(A)(v)”

47. Page 714, line 3: strike “make available” and insert “open to inspection and examination”

48. Page 717, line 22: at the end insert “1a(47)(A)(v) of the Commodity Exchange Act and section”

49. Page 719, line 9: at the end, insert the following:

“(h) REDUCING CLEARING SYSTEMIC RISK.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by adding at the end the following:

“In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.”

50. Page 720, line 24: insert “, including price and volume,” after “transaction”

51. Page 725, lines 15-16: strike all and insert the following:

“(i) the requirements and core principles described in this section; and”

52. Page 726, line 2: strike “subsection” and insert “section”

53. Page 726, line 17 through Page 727, line 3: strike all

54. Page 730, lines 2-3: strike all and insert “data repository with respect to the requirements and core principles described in this section;”

55. Page 739, lines 13-14: strike “security-based swap agreements” and insert “swaps”
56. Page 739, lines 15-16: strike “3(a)(78) of the Securities Exchange Act of 1934” and insert “1a(47)(A)(v)”
57. Page 741, line 21: strike “(c), (e), and (f),” and insert “(d) and (e)”
58. Page 741, lines 22 and 23: strike “non-bank”
59. Page 743, lines 19-21: strike all and insert “to prescribe rules as directed under this section.”
60. Page 743, line 25 and Page 744, lines 13-14: strike “DEPOSITORY INSTITUTIONS” and insert “BANKS”
61. Page 744, lines 2-5: strike “that is a depository institution, as that term is defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813),” and insert “for which there is a Prudential Regulator”
62. Page 744, lines 15-18: strike “that is not a depository institution, as that term is defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813),” and insert “for which there is not a Prudential Regulator”
63. Page 744, lines 7-8: strike “appropriate Federal banking agency” and insert “Prudential Regulator”
64. Page 744, line 9-11: strike “to help ensure the safety and soundness of the swap dealer or major swap participant”
65. Page 744, line 20-21: strike “and the Securities and Exchange Commission”
66. Page 744, line 23-24: strike “to help ensure the safety and soundness of the swap dealer or major swap participant”
67. Page 745, lines 1 through Page 747, line 16: strike all and insert the following:
 “(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—The Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a Prudential Regulator imposing—
 “(i) capital requirements; and
 “(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.
 “(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for swap dealers and major swap participants, with respect to their

activities as a swap dealer or major swap participant, for which there is not a Prudential Regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

“(3) STANDARDS FOR CAPITAL & MARGIN.—

“(A) To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall —

“(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

“(ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.”

68. Page 747, line 17: strike “(D)” and insert “(B)”

69. Page 748, line 25 through Page 750, line 2: strike all

70. Page 750, line 3: strike “(5)” and insert “(C)”

71. Page 750, lines 4-5: strike “appropriate Federal banking agency” and insert “Prudential Regulator”

72. Page 750, line 9: strike “may” and insert “shall”

73. Page 750, line 10: strike “agency” and insert “Regulator”

74. Page 750, line 16: strike “(6)” and insert “(D)”

75. Page 750, lines 18-19: strike “appropriate Federal banking agencies” and insert “Prudential Regulators”

76. Page 751, line 10 through Page 752, line 4: strike all

77. Page 753, line 4: strike the period and insert the following: “;

“(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

78. [Page 754, strike line 8 through page 758 line 9 and insert the following:

“(h) Business Conduct Standards-

“(1) IN GENERAL- Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in subparagraph (3) and as may be prescribed by the Commission by rule or regulation that relate to--

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

- `(B) diligent supervision of the business of the registered swap dealer and major swap participant;
- `(C) adherence to all applicable position limits; and
- `(D) such other matters as the Commission determines to be appropriate.

`(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES-

`(A) A swap dealer or major swap participant that acts as an advisor to special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) A swap dealer that enters into or offers to enter into swap with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

`(C) SPECIAL ENTITY DEFINED- For purposes of this subsection, the term “special entity” means—

- (i) a Federal agency;
- (ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;
- (ii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
- (iii) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or
- (iv) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

`(3) BUSINESS CONDUCT REQUIREMENTS- Business conduct requirements adopted by the Commission shall--

`(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

`(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of--

- `(i) information about the material risks and characteristics of the swap;
 - `(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and
 - `(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and
 - `(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;
- `(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

Comment [.1]: Do we need a time? Prior to entering into a transaction? Prior to finalizing a transaction?

`(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

‘(4) SPECIAL REQUIREMENTS FOR SWAP DEALERS ACTING AS ADVISORS—

‘(i) IN GENERAL.—It shall be unlawful for a swap dealer or major swap participant—

(I) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

(III) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(ii) Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(iii) Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

(I) the financial status of the Special Entity;

(II) the tax status of the Special Entity;

(III) the investment or financing objectives of the Special Entity;

and

(IV) any other information that the Commission may prescribe by rule or regulation.

‘(5) SPECIAL REQUIREMENTS FOR SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES—

‘(i) Any swap dealer or major swap participant that offers to or enters into a swap with a Special Entity shall—

(I) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that--

‘(aa) has sufficient knowledge to evaluate the transaction and risks;

‘(bb) is not subject to a statutory disqualification;

‘(cc) is independent of the swap dealer or major swap participant;

‘(dd) undertakes a duty to act in the best interests of the counterparty it represents;

‘(ee) makes appropriate disclosures;

`(ff) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

‘(gg) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(II) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

‘(ii) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

`(6) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

‘(7) This section shall not apply with respect to a transaction that is

(A) initiated by a Special Entity on an exchange or swap execution facility and

(B) the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.”

79. Page 758, lines 10 and 19: strike “AND BACK OFFICE”

80. Page 761, line 11: at the end insert ““(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.”

81. Page 765, line 1 through Page 767, line 19: strike all and insert the following:
“Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 17.”

82. Page 768, line 12: strike “A” insert ““(1) IN GENERAL—Except as specified in paragraph (2), a”

83. Page 768, line 15: strike “1” and insert “A”

84. Page 768, line 16: strike “2” and insert “B”

85. Page 768, line 16: at the end insert the following:

“(2) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.”

86. Page 773, line 4: after “shall” insert ““(i)”

87. Page 773, line 6: strike “limitation.” and insert “limitation; and “(ii) monitor positions established on or thought the swap execution facility for compliance with the limit set by; the Commission and the limit, if any, set by the swap execution facility.”

88. Page 773, lines 7-16: strike all

89. Page 774, line 16: after “capture” insert “and transmit”

90. Page 775, line 6: strike the period and insert the following: “; “(iii)shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

91. Page 781, line 12: at the end insert the following:

“(c)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

“(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.”

92. Page 791, line 17: strike “basis.” and insert “basis. “(22) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

“(23) SEC.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

93. Page 793, line 15 through Page 796, line 13: strike all and insert the following:

“(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of

sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

“(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

“(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.

“(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

“(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

“(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

“(B) to the maximum extent practicable, in its discretion—

“(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

“(ii) to deter and prevent market manipulation, squeezes, and corners;

“(iii) to ensure sufficient market liquidity for bona fide hedgers; and

“(iv) to ensure that the price discovery function of the underlying market is not disrupted.

“(4) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

“(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position;

“(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis;

“(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap;

“(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and

“(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

“(5) ECONOMICALLY EQUIVALENT CONTRACTS.—

“(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than

bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

“(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

“(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

“(ii) establish the limits simultaneously with limits established under paragraph (2).

“(6) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

“(7) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”.

94. Page 796, line 24: at the end insert the following:

“(c) Section 4a(c) of such Act is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding after and below the end the following:

“(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

“(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

“(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

“(iii) arises from the potential change in the value of—

“(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

“(II) liabilities that a person owns or anticipates incurring;

or

“(III) services that a person provides, purchases, or anticipates providing or purchasing; or
“(B) reduces risks attendant to a position resulting from a swap that—
“(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or
“(ii) meets the requirements of subparagraph (A).”.

(d) This section shall become effective on the date of its enactment.”

95. Page 798, lines 2-3: strike “It shall be unlawful for” and insert “The Commission may not permit”

96. Page 802, line 10: insert “(1)” before “A”

97. Page 802, line 15, strike “person” and insert “person—“(A)”

98. Page 802, lines 17-18: strike all after “that” and insert the following: “is—

“(i) legally organized under the laws of a foreign country;

“(ii) authorized to act as a board of trade by a foreign futures authority; and

“(iii) subject to regulation by the foreign futures authority; and

“(B) has not been determined by the Commission to be operating in violation of subsection (a).

“(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).”.

99. Page 804, line 5: strike “an” and insert “such”

100. Page 804, line 20 through Page 805, line 2: strike all, resequence subsequent subparagraphs

101. Page 805, lines 3-16: strike every instance of “bilateral trading agreement” and replace with “swap”

Page 806, lines 12-25: strike all and insert the following:

“(a) CFTC.—Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

“(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(e) with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

102. Page 807, line 11: strike “shall” and insert “may”

103. Page 812, line 5: after “organization,” insert “clearing agency,”

104. Page 812, line 6: after “repository,” insert “security-based swap data repository, security-based swap execution facility,”
105. Page 814, line 13: insert “(other than section 5a” after “““”
106. Page 815, line 22: insert “longer” after “other”
107. Page 817, lines 11-16: strike all
108. Page 819, line 5: strike “A” and insert ““(I) Except as provided in subclause (II), a”
109. Page 819, line 17: at the end insert the following:
““(II) With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to the date of enactment of this subclause, subclause (I) shall take effect 90 days after the date of enactment of this subclause.
110. Page 821, line 9, strike “shall have jurisdiction to” and insert “may”
111. Page 822, line 3-4: strike all and insert the following:
“(b) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended by striking subsection (c) and inserting the following:
“(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—”” (all subsequent paragraphs, subparagraphs and clauses through Page 827 need and quotations marks)
112. Page 822, line 21: after “entity” insert “and notice of such certification to its members (in a manner to be determined by the Commission)”
113. Page 823, line 25: at the end insert the following:
“(C) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in subparagraph (A), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.”
114. Page 825, line 11: strike “subtitle” and insert “Act”
115. Page 834, line 13, insert “civil” before “judicial”
116. Page 834, line 20, Page 835, line 20, Page 836, line 5, Page 841, line 16: insert “covered” after “any”
117. Page 834, line 21: strike “action” and insert “action,”

118. Page 835, lines 21-22, Page 836, lines 5-6, Page 841, lines 17-18: strike “brought by the Commission under the Act”

119. Page 837, lines 1 and 5: strike “actions” and insert “action”

120. Page 840, line 9, strike “APPEALS” and insert “JUDICIAL REVIEW”

121. Page 840, lines 15-16, strike “may be appealed to the appropriate court of appeals of the United States” and insert “shall be subject to judicial review in an appropriate United States district court”

122. Page 840, line 16: strike “court of appeals of the United States” and insert “United States district court”

123. Page 840: strike lines 19-21.

124. Page 841, line 16, insert “covered” before “judicial”.

125. Page 841, lines 17-18, strike “brought by the Commission under this Act”.

126. Page 846, line 10 through Page 847, line 8: strike all and insert the following:
“(A) IN GENERAL.- Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.”

127. Page 847, line 9: strike “iii” and insert “B”

128. Page 847, line 16: strike “(B)” and insert “(C)”

129. Page 847, line 19, Page 848, line 24, strike “and privileged”

130. Page 850, lines 16-17, strike “and shall be subject to prosecution under section 1001 of title 18, United States Code”

131. Page 854, lines 1-3: strike all and insert the following:
“(i) Section 22 of the Commodity Exchange Act is amended—
 (1) in subsection (a)(1)(B) by
 (A) inserting ‘or any swap’ after ‘commodity’;
 (B) inserting ‘or swap’ after ‘such contract’;
 (2) in subsection (a)(1)(C) at the end insert “(iv) a swap; or”

- (3) in subsection (b)(1)(A) by striking “section 2(h)(7) or sections 5 through 5c” and inserting “sections 5, 5b, 5c, 5h, or 21”.

132. Page 858, lines 5-19: strike all and insert the following:

“(a) In order to promote effective and consistent global regulation swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

“(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.”

133. Page 859, line 14: after “2010” insert the following”

“provided no rule or regulation promulgated by the Commission shall (a) restrict any person’s hedging or risk management activities; (b) require any person to disclose nonpublic information that may be material to the market price, rate or level of the-swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, except as necessary to make any statement made to any other person in or in connection with the transaction not misleading in any material respect; or (c) duplicate the prohibitions in paragraph (3) below”

134. Page 861, line 2: at the end insert the following:

“(C) MISTAKES.- Mistakenly transmitting false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).

135. Page 867, line 6: strike “Court of Appeals” and insert “district court”

136. Page 867, lines 7 and 11: strike “circuit” and insert “district”

137. Page 868, line 7: strike “shall have jurisdiction to” and insert “may”

138. Page 868, line 9: strike the comma and all that follows through the word “conclusive” on lines 11-12

139. Page 868, line 25: insert “knowingly” before “fail”.

140. Page 869, line 1: strike “shall be guilty of a misdemeanor and”

141. Page 869, lines 4-5: strike “less than 6 months nor”.

142. Page 869, line 6: insert “knowing” before “failure”.

143. Page 869, line 8: strike “shall be guilty of a felony”

144. Page 869, lines 14-16: strike the last sentence of subsection (d)

145. Page 870, at the end insert the following:

“SEC. 754. CONFLICTS OF INTEREST.

(a) *Commodity Exchange Act.*--

(1) **DEFINITION OF RESTRICTED OWNER.**--Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(51) **RESTRICTED OWNER.**--The term ‘restricted owner’ means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant, that is an identified financial holding company as defined in Section 1000(b)(5) of the Financial Stability Improvement Act of 2009, or a person associated with a swap dealer or a major swap participant that is an identified financial holding company, or a person associated with a security-based swap dealer or major security-based swap participant that is an identified financial holding company.”.

(2) **CONFLICTS OF INTEREST.**--

(A) Subparagraph (P) of section 5b(c)(2) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end of such subparagraph the following: “The rules of the derivatives clearing organization that clears swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the organization or in persons with a controlling interest in the organization, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.”.

(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended--

(i) by striking “and” at the end of subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:

“(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and”.

(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:

“(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.”.

(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:

“(15) **CONFLICTS OF INTEREST.**--

“(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

“(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.

“(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.”.

(b) *Securities Exchange Act of 1934.*--

(1) **DEFINITION OF RESTRICTED OWNER.**--Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(78) **RESTRICTED OWNER.**--The term ‘restricted owner’ has the same meaning as in section 1a(51) of the Commodity Exchange Act.”.

(2) **CONFLICTS OF INTEREST.**--

(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:

``The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.".

(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended--

(i) in subparagraph (C), strike ``and"; and

(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):

``(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and".

(C) Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

``(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

``(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

``(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.".

(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:

``(J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that

such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.”.

Page 871, lines 1-4: strike all and insert the following:

“SEC. 755. EFFECTIVE DATE.

Unless otherwise provided, the provisions of this subtitle shall become effective the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.”

146. Page 873, line 21 through Page 874, line 8: strike all and insert “Commission, excluding positions held for hedging or mitigating commercial risk;”

147. Page 874, line 18: after “holds” insert “and that is not subject to capital requirements established by an appropriate Federal banking regulator”

148. Page 875, line 7: at the end insert the following:
“In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.”

149. Page 875, line 23: after “is” insert “primarily based on (without reference to any interest rate payments that provide for the actual or imputed financing for the referenced security or loan)”

150. Page 877, line 23 through Page 878, line 12: strike all

151. Page 880, lines 5-7: strike all and insert the following:
“(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or”

152. Page 880, line 19 through Page 881, line 6: strike all and insert the following:
“(C) EXCEPTION.—The term “security-based swap dealer” does not include a person that enters into security-based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of regular business.
“(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based

swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.”

153. Page 881, lines 19-23: strike all after “that” and insert the following:
“collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.”

154. Page 882, lines 4 and 5: before “swap” insert “security-based”

155. Page 882, line 6: strike “multiple”

156. Page 882, lines 8-9: strike “that are open to multiple participants”

157. Page 882, line 13: strike “designated contract market” and insert “national securities exchange”

158. Page 883, line 6: strike “define” and insert the following:
“define—
(1) the term “commercial risk”;
(2) any other term included in an amendment to the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) made by this subtitle; and
(3) ”

159. Page 883, lines 14 through Page 884, line 2: strike all

160. Page 890, line 18 through Page 908, line 3: strike all and insert the following:
“(a) IN GENERAL.—
“(1) STANDARD FOR CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(C)(ii) of subsection (b) that the security-based swap is required to be cleared.
“(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—
“(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and
“(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.
“(b) COMMISSION REVIEW.—
“(1) COMMISSION-INITIATED REVIEW.—
“(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.

“(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

“(2) SWAP SUBMISSIONS.—

“(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

“(B) Any security-based swap or group, category, type or class of security-based swaps listed for clearing by a clearing agency as of the date of enactment of this subsection shall be considered submitted to the Commission.

“(C) The Commission shall—

“(i) make available to the public any submission received under subparagraphs (A) and (B);

“(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

“(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

“(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

“(4) DETERMINATION.—

“(A) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

“(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

“(iv) The effect on competition, including appropriate fees and charges applied to clearing.

“(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

“(B) In making a determination under paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(5) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for a clearing agency’s submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in subparagraph (2)(B).

“(6) Effect on Authority.—Nothing in this paragraph shall authorize the Commission to require a clearing agency to list for clearing, a security-based swap, group, category, type or class of security-based swaps.

“(c) STAY OF CLEARING REQUIREMENT.—

“(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

“(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

“(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

“(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

“(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

“(4) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency’s clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

“(d) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this section.

“(e) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and

“(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

“(A) 90 days after such effective date; or

“(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

“(f) CLEARING TRANSITION RULES.—

“(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

“(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

“(g) EXCEPTIONS.—

“(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap—

“(A) is not a financial entity;

“(B) is using security-based swaps to hedge or mitigate commercial risk, including operating and balance sheet risk; and

“(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

“(2) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.

“(3) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

“(4)(i) Financial Entity Definition.—For the purposes of this subsection, a financial entity is defined as—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) a commodity pool as defined in section 1a(10) of the Commodity Exchange

Act;

“(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

“(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(VIII) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956.

“(ii) Exclusion.— The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including

“(I) depository institutions with total assets of \$10,000,000,000 or less;

“(II) farm credit system institutions with total assets of \$10,000,000,000 or less;

or

“(III) credit unions with total assets of \$10,000,000,000 or less.

“(5) Treatment of Affiliates.—“(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under subsection (g) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of

the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

“(B) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in subparagraph (A) shall not apply if the affiliate is—

- “(i) a swap dealer;
- “(ii) a security-based swap dealer;
- “(iii) a major swap participant;
- “(iv) a major security-based swap participant;
- “(v) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a–3(c));
- “(vi) a commodity pool; or
- “(vii) a bank holding company with over \$50,000,000,000 in consolidated assets; or

“(6) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

“(h) TRADE EXECUTION.—

“(1) IN GENERAL.—With respect to transactions involving security based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

- “(A) execute the transaction on an exchange; or
- “(B) execute the transaction on a security-based swap execution facility registered under section 3D or a security-based swap execution facility that is exempt from registration under section 3D(e) of this Act.

“(B) EXCEPTION.—The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).”

- 161. Page 908, line 4: strike “(b) AUDIT” and insert “(i) BOARD”
- 162. Page 908, line 5: strike “or trade” and insert “a security-based swap or execute”
- 163. Page 908, line 10-11: strike “the issuer’s audit committee” and insert “an appropriate committee of the issuer’s board or governing body”
- 164. Page 908, line 14: strike “(c)” and insert “(j)”
- 165. Page 910, line 3: strike “(a)” and insert “(e)”
- 166. Page 910, line 13: strike “(a)(8)” and insert “(h)”
- 167. Page 914, line 5: strike “(d)” and insert “(i)”

168. Page 917, line 21: strike ““(1) IN GENERAL.—“

169. Page 918, lines 9-24: strike all

170. Page 918, line 25: at the end insert the following:

“(l) Existing Depository Institutions and Derivative Clearing Organizations.—

“(1) IN GENERAL.—A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before the date of enactment of this subsection—

“(A) the depository institution cleared security-based swaps as a multilateral clearing organization; or

“(B) the derivative clearing organization cleared securities-based swaps pursuant to an exemption from registration as a clearing agency.

“(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(3) The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).”

171. Page 919, line 1: strike “(l)” and insert “(m)”

172. Page 923, line 22 through Page 924, line 25: strike all, resequence subsequent paragraphs

173. Page 926, line 2: after “capture” insert “and transmit”

174. Page 928, lines 3-11: strike all and insert “resources exceeds the total amount that”

175. Page 936, line 11: strike “.” and insert the following:

“(f) SEGREGATION REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAPS –

“(1) Segregation of assets held as collateral in uncleared security-based swap transactions.—

“(A) Notification. – A security-based swap dealer or major security-based swap participant shall be required to notify the counterparty of the security-based swap dealer or major security-based swap participant at the beginning of a security-based swap transaction that the counterparty has the right to require segregation of the funds of other property supplied to margin, guarantee, or secure the obligations of the counterparty.

“(B) Segregation and Maintenance of Funds.— At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall –

“(i) segregate the funds or other property for the benefit of the counterparty; and

“(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the security-based swap dealer or major security-based swap participant.

“(2) APPLICABILITY – the requirements described in paragraph (1) shall –

“(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency;

“(B)(i) not apply to variation margin payments; or

“(ii) not preclude any commercial arrangement regarding –

“(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

“(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

“(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS – The segregated account described in paragraph (1) shall be –

“(A) carried by an independent third-party custodian; and

“(B) designated as a segregated account for and on behalf of the counterparty.

“(4) REPORTING REQUIREMENT – If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

“(g) Bankruptcy.—A security-based swap as defined in section 3(a)(68) of the Securities Exchange Act shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11, United States Code. An account that holds a security-based swap, other than a portfolio margining account referred to in section 15(c)(3)(C) of the Securities Exchange Act of 1934 shall be considered to be a securities account as that term is defined in section 741 of title 11 of the United States Code. The definitions of the terms “purchase” and “sale” in section 3(a)(13) and (14) of the Securities Exchange Act shall be applied to the terms “purchase” and “sale” as used in section 741 of title 11, United States Code. The term “customer” as defined in section 741 of title 11, United States Code, excludes any person to the extent such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to

which there is a customer protection requirement under section 15(c)(3) of the Securities Exchange Act or a segregation requirement.”.”

176. Page 943, line 9, insert “, including price and volume,” after “transaction”
177. Page 943, line 21, insert “, volume,” after “transaction
178. Page 944, line 10, strike “subsection”
179. Page 947, lines 7 and 8, strike “derivatives clearing organizations” and insert “clearing agencies”
180. Page 948, lines 5-6: after “the” insert the following: “requirements and”
181. Page 952, lines 15-16: strike all and insert “spect to the requirements and core principles described in this subsection;”
182. Page 958, line 8: strike “(c), (e), and (f),” and insert “(d) and (e)”
183. Page 958, lines 11 and 12: strike “non-bank”
184. Page 960, lines 8-11: strike all after “participants” and insert “for which there is a Prudential Regulator.”
185. Page 960, lines 14-18: strike all and insert “to prescribe rules as directed under this section.”
186. Page 961, lines 6-7: strike “appropriate Federal banking agency” and insert “Prudential Regulator”
187. Page 961, lines 8-10: strike “to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant”
188. Page 961, line 22-25: strike “to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant”
189. Page 962, line 2 through Page 964, line 22: strike all and insert the following:

“(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—The Prudential Regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a Prudential Regulator imposing—

 - “(i) capital requirements; and
 - “(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a Prudential Regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

“(3) STANDARDS FOR CAPITAL & MARGIN.—

“(A) To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

“(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.”

190. Page 964, line 17: strike “(D)” and insert “(B)”

191. Page 966, line 4 through Page 967, line 3: strike all

192. Page 967, line 4: strike “(5)” and insert “(C)”

193. Page 967, lines 5-6: strike “appropriate Federal banking agency” and insert “Prudential Regulator”

194. Page 967, line 11: strike “may and insert “shall”

195. Page 967, line 12: strike “agency” and insert “Regulator”

196. Page 967, line 18: strike “(6)” and insert “(D)”

197. Page 967, lines 21-22: strike “appropriate Federal banking agencies” and insert “Prudential Regulators”

198. Page 968, line 13 through Page 969, line 8: strike all

199. Page 971, line 19 through Page 976, line 6

“(h) Business Conduct Standards-

“(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in subparagraph (3) and as may be prescribed by the Commission by rule or regulation that relate to--

“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

- `(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;
- `(C) adherence to all applicable position limits; and
- `(D) such other matters as the Commission determines to be appropriate.

`(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES-

`(A) A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) A security-based swap dealer that enters into or offers to enter into security-based swap with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

`(C) SPECIAL ENTITY DEFINED- For purposes of this subsection, the term “special entity” means—

- (i) a Federal agency;
- (ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;
- (ii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
- (iii) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or
- (iv) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

`(3) BUSINESS CONDUCT REQUIREMENTS- Business conduct requirements adopted by the Commission shall--

`(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

`(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of--

`(i) information about the material risks and characteristics of the security-based swap;

`(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

`(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

`(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

- `(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and
- `(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

‘(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS—

‘(i) IN GENERAL.—It shall be unlawful for a security-based swap dealer or major security-based swap participant—

(I) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

(III) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(ii) Any security-based swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(iii) Any security-based swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the Special Entity, including information relating to—

(I) the financial status of the Special Entity;

(II) the tax status of the Special Entity;

(III) the investment or financing objectives of the Special Entity;

and

(IV) any other information that the Commission may prescribe by rule or regulation.

‘(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES—

‘(i) Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a Special Entity shall—

(I) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that--

‘(aa) has sufficient knowledge to evaluate the transaction and risks;

‘(bb) is not subject to a statutory disqualification;

`(cc) is independent of the security-based swap dealer or major security-based swap participant;
 `(dd) undertakes a duty to act in the best interests of the counterparty it represents;
 `(ee) makes appropriate disclosures;
 `(ff) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and
 `(gg) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(II) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the security-based swap dealer is acting; and

“(ii) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(6) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

“(7) This section shall not apply with respect to a transaction that is

(A) initiated by a Special Entity on an exchange or security-based swap execution facility and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.”

200. Page 976, lines 7 and 17: strike “AND BACK OFFICE”

201. Page 979, line 17: at the end, insert ““(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.”

202. Page 990, line 11 strike “section 10B(n)” and insert “section 13(n)”

203. Page 1001, strike lines 8-12, and insert the following:

“(c) DERIVATIVES.—Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 79 of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), and 17A(l); provided that the Commission shall have exemptive authority under this title with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 4(c) of the Commodity Exchange Act.”.

Page 1002, lines 7-10: strike all and insert the following:

“Unless otherwise provided, the provisions of this subtitle shall become effective the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.”

As Passed
by the Senate
Conferees

June 15, 2010

****Senate Counteroffer Offer****

Title: Title III

Matter: Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors

The Senate accepts the following House proposals for amendments to the Base text:

1. Add House provision requiring adoption of procedures and standards to ensure employee transfer requirements are met and to study implementation of such transfer requirements.
2. With modifications, add House provision requiring an implementation plan and reporting requirements to ensure an orderly transfer of personnel and property from OTS.
3. With modifications, add House provision enhancing Federal Deposit Insurance: elimination of pro-cyclical assessments; enhanced access to information for deposit insurance purposes; and transition reserve ratio requirement to reflect new assessment base.
4. With modifications, add provision to insure noninterest bearing transaction accounts above standard FDIC limit, similar to current FDIC Transaction Account Guarantee Program.
5. With modifications, add provision to increase permanently FDIC and NCUSIF standard maximum deposit insurance amount to \$250,000 and make the increase retroactive to January 1, 2008.
6. With modifications, amend base text provision establishing the Office of Women and Minority Inclusion to: require the Director of the Office be a Senior Executive Service position; require the Director to coordinate technical assistance to minority-owned and women-owned businesses; require the assessment of the impact of the policies and regulations of each agency on minority-owned and women-owned businesses; and establish an Office of Women and Minority Inclusion in the Office of National Insurance.

The Senate does not accept the following House proposals for amendments to the Base text:

1. Offering alternative language to strike Senate provision exempting the Office of the Comptroller of the Currency from the Federal Property and Administrative Services Act.
2. Amend Senate provision protection employees from involuntary separation by increasing the protection period from 2 years to 3 years, extending the protection to OCC employees, and clarifying pay-protection provisions.
3. Add Mutual National Bank and Federal Mutual Bank Holding Company Charters.

HOUSE PROPOSED AMENDMENTS TO TITLE III

[Page and line #s refer to Base text of proposed conference report]

insert
Rider
(A)

~~Page 357, strike line 10 and all that follows through
line 23.~~

Page 365, strike line 5 and all that follows through
line 22, and insert the following new paragraphs:

1 (1) 3-YEAR PROTECTION.—

2 (A) IN GENERAL.—Except as provided in
3 paragraph (2), each affected employee shall not,
4 during the 3-year period beginning on the
5 transfer date, be involuntarily separated, or in-
6 voluntarily reassigned outside his or her locality
7 pay area.

8 (B) AFFECTED EMPLOYEES.—For pur-
9 poses of this paragraph, the term “affected em-
10 ployee” means—

11 (i) an employee transferred from the
12 Office of Thrift Supervision holding a per-
13 manent position on the day before the
14 transfer date; and

15 (ii) an employee of the Office of the
16 Comptroller of the Currency holding a per-

RIDER A

Page 357, line 13, after "law" insert "(except the full and open competition requirements of the Competition in Contracting Act)

Page 357, line 16, delete ", in any lawful manner, such goods and services, or personal or".

1 manent position on the day before the
2 transfer date.

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

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

8 (B) terminate an appointment to a position
9 excepted from the competitive service because of
10 its confidential policy-making, policy-deter-
11 mining, or policy-advocating character.

Page 366, line 7, after the period add the following new sentence: "Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period will be the reduced rate that would have applied but for the transfer."

Page 375, line 11, strike "and".

Page 375, line 19, strike the period and insert a semicolon.

Page 375, after line 19, insert the following new paragraphs:

- 1 (3) shall, jointly with the Director of the Office
- 2 of Thrift Supervision, develop and adopt procedures
- 3 and safeguards designed to ensure that the require-
- 4 ments of this subsection are met; and
- 5 (4) shall conduct a study detailing the position
- 6 assignments of all employees transferred pursuant to
- 7 subsection (a), describing the procedures and safe-
- 8 guards adopted pursuant to paragraph (3), and
- 9 demonstrating that the requirements of this sub-
- 10 section have been met; and shall, not later than 365
- 11 days after the transfer date, submit a copy of such
- 12 study to Congress.

Page 381, after line 5, insert the following new section:

13 SEC. 327. IMPLEMENTATION PLAN AND REPORTS. 180

- 14 (a) PLAN SUBMISSION.—Within 90 days of the enact-
- 15 ment of the Restoring American Financial Stability Act
- 16 of 2010, ~~the Secretary and the Corporation, in consulta-~~
- 17 ~~tion with~~ the Office of the Comptroller of the Currency
- 18 and the Office of Thrift Supervision, shall jointly submit
- 19 a plan to the Congress and the Inspectors General of the
- 20 Department of the Treasury ~~and of the Corporation detail-~~

the Board
of Governor

and the Board
of Governors

the Senate
Committee
on Banking,
Housing
and Urban
Affairs
and the
House
Committee
on Financial Services

4 Board of Governors,

1 ing the steps the ~~Secretary~~, the Corporation, the Office
2 of the Comptroller of the Currency, and the Office of
3 Thrift Supervision will take to implement the provisions
4 of sections 301 through 326, and the provisions of the
5 amendments made by such sections.

6 (b) INSPECTORS GENERAL REVIEW OF THE PLAN.—

7 Within 60 days of the date on which the ~~Congress~~ receives
8 the plan required under subsection (a), the Inspectors
9 General of the Department of the Treasury ~~and of the~~
10 Corporation shall jointly provide a written report to the
11 ~~Secretary and the Corporation~~ and shall submit a copy
12 to the ~~Congress~~ detailing whether the plan conforms with
13 the intent of the provisions of sections 301 through 326,
14 and the provisions of the amendments made by such sec-
15 tions, including—

16 (1) whether the plan sufficiently takes into con-
17 sideration the orderly transfer of personnel;

18 (2) whether the plan describes procedures and
19 safeguards to ensure that the Office of Thrift Super-
20 vision employees are not unfairly disadvantaged rel-
21 ative to employees of the Office of the Comptroller
22 of the Currency and the Corporation;

23 (3) whether the plan sufficiently takes into con-
24 sideration the orderly transfer of authority and re-
25 sponsibilities;

Board of
Governors,

and the
Board of
Governors

Senate
Committee
on Banking,
Housing and
Urban
Affairs
and the
House
Committee
on Financial
Services

the Office of the
Comptroller of
the Currency
and the
Office of Thrift
Supervision

1 (4) whether the plan sufficiently takes into con-
2 sideration the effective transfer of funds;

3 (5) whether the plan sufficiently takes in con-
4 sideration the orderly transfer of property; and

5 (6) any additional recommendations for an or-
6 derly and effective process.

7 (c) IMPLEMENTATION REPORTS.—Not later than 6

8 months after the date on which the Congress receives the

9 report required under subsection (b), and every 6 months

10 thereafter until all aspects of the plan have been imple-

11 mented, the Inspectors General of the Department of the

12 Treasury and the Corporation shall jointly provide a writ-

13 ten report on the status of the implementation of the plan

14 to the Secretary and the Corporation and shall submit a

15 copy to the Congress.

Senate
Committee
on Banking,
Housing and
Urban Affairs
and the
House Committee
on Financial
Services

Board of
Governors

and the
Board of
Governors

the Office of the Comptroller of
the Currency and the Office of
Thrift Supervision

Page 382, after line 16, insert the following new sec-
tions (and redesignate the subsequent section accord-
ingly):

16 SEC. 332. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

17 Section 7(e) of the Federal Deposit Insurance Act is
18 amended—

19 (1) in paragraph (2)—

20 (A) by amending subparagraph (B) to read

21 as follows:

1 “(B) LIMITATION.—The Board of Direc-
2 tors may, in its sole discretion, suspend or limit
3 the declaration of payment of dividends under
4 subparagraph (A).”;

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

7 “(C) NOTICE AND OPPORTUNITY FOR COM-
8 MENT.—The Corporation shall prescribe, by
9 regulation, after notice and opportunity for
10 comment, the method for the declaration, cal-
11 culation, distribution, and payment of dividends
12 under this paragraph”; and

13 (C) by striking subparagraphs (D) through
14 (G); and

15 (2) in paragraph (4)(A) by striking “para-
16 graphs (2)(D) and” and inserting “paragraphs (2)
17 and”.

18 SEC. 333. ENHANCED ACCESS TO INFORMATION FOR DE-
19 POSIT INSURANCE PURPOSES.

20 [(a) Section 7(a)(2)(B) of the Federal Deposit Insur-
21 ance Act is amended by striking “, after agreement with
22 the Comptroller of the Currency, the Board of Governors
23 of the Federal Reserve System, and the Director of the
24 Office of Thrift Supervision, as appropriate.”]

INSERT RIDER (B).

1 (b) Section 7(b)(1)(E) of the Federal Deposit Insur-
 2 ance Act is amended—

3 (1) in clause (i), by striking “such as” and in-
 4 serting “including”; and

5 (2) ⁱⁿ ~~by striking~~ clause (iii), ^{by striking “Corporation.”}

6 ^{and inserting “Corporation, except as provided in section}
 SEC. 334. TRANSITION RESERVE RATIO REQUIREMENTS TO 7(a)(2)(B).”

7 REFLECT NEW ASSESSMENT BASE.

8 (a) Section 7(b)(3)(B) of the Federal Deposit Insur-
 9 ance Act is amended to read as follows:

10 “(B) MINIMUM RESERVE RATIO.—The re-
 11 serve ratio designated by the Board of Direc-
 12 tors for any year may not be less than 1.15 per-
 13 cent of estimated insured deposits, or the com-
 14 parable percentage of the assessment base set
 15 forth in paragraph (2)(C).”

16 (b) Section 3(y)(3) of the Federal Deposit Insurance
 17 Act is amended by inserting “, or such comparable per-
 18 centage of the assessment base set forth in section
 19 7(b)(2)(C)” before the period.

20 (c) For a period of not less than 5 years after the
 21 date of the enactment of this title, the Federal Deposit
 22 Insurance Corporation shall make available to the public
 23 the reserve ratio and the designated reserve ratio using
 24 both estimated insured deposits and the assessment base

RIDER B

Rider A/B

- (a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking "agreement" and inserting "consultation".

1 under section 7(b)(2)(C) of the Federal Deposit Insurance
2 Act.

3 SEC. 335. PERMANENT INCREASE IN DEPOSIT AND SHARE
4 INSURANCE.

5 (a) PERMANENT INCREASE IN DEPOSIT INSUR-
6 ANCE.—Section 11(a)(1)(E) of the Federal Deposit Insur-
7 ance Act (12 U.S.C. 1821(a)(1)(E)) is amended—

8 (1) by striking “\$100,000” and inserting
9 “\$250,000”; and

10 (2) by adding at the end the following new sen-
11 tences: “Notwithstanding any other provision of law,
12 the increase in the standard maximum deposit insur-
13 ance amount to \$250,000 shall apply to depositors
14 in any institution for which the Corporation was ap-
15 pointed as receiver or conservator on or after Janu-
16 ary 1, 2008, and before October 3, 2008. The Cor-
17 poration shall take such actions as are necessary to
18 carry out the requirements of this section with re-
19 spect to such depositors, without regard to any time
20 limitations under this Act. In implementing this and
21 the preceding 2 sentences, any payment on a deposit
22 claim made by the Corporation as receiver or conser-
23 vator to a depositor above the standard maximum
24 deposit insurance amount in effect at the time of the
25 appointment of the Corporation as receiver or con-

1 servator shall be deemed to be part of the net
 2 amount due to the depositor under subparagraph
 3 (B)."

4 (b) PERMANENT INCREASE IN SHARE INSURANCE.—
 5 Section 207(k)(5) of the Federal Credit Union Act (12
 6 U.S.C. 1787(k)(5)) is amended by striking "\$100,000"
 7 and inserting "\$250,000".

8 ~~[(c) TECHNICAL AND CONFORMING AMENDMENT.—~~
 9 ~~Section 11(a)(1)(F)(i)(I) of the Federal Deposit Insurance~~
 10 ~~Act (12 U.S.C. 1821 (a)(1)(F)(i)(I)) is amended striking~~
 11 ~~"\$100,000" and inserting "\$250,000".]~~

12 ~~SEC. 336. PERMANENT EXTENSION OF THE TRANSACTION~~

13 ~~ACCOUNT GUARANTY PROGRAM.~~

TEMPORARY

14 (a) TAGP EXTENSION.—Section 11(a)(1) of the
 15 Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is
 16 amended—

17 (1) in subparagraph (B)—

18 (A) by striking "The net amount" and in-
 19 serting the following:

20 "(i) IN GENERAL.—Subject to clause

21 (ii), the net amount"; and

22 (B) by adding at the end the following new
 23 clauses:

24 "(ii) INSURANCE FOR NONINTEREST-
 25 BEARING TRANSACTION ACCOUNTS.—Not-

1 withstanding clause (i), the Corporation
2 shall fully insure the net amount that any
3 depositor at an insured depository institu-
4 tion maintains in a noninterest-bearing
5 transaction account. Such amount shall
6 not be taken into account when computing
7 the net amount due to such depositor
8 under clause (i).

9 “(iii) NONINTEREST-BEARING TRANS-
10 ACTION ACCOUNT DEFINED.—For purposes
11 of this subparagraph, the term ‘non-
12 interest-bearing transaction account’
13 means a deposit or account maintained at
14 an insured depository institution—

15 “(I) with respect to which inter-
16 est is neither accrued nor paid;

17 “(II) on which the depositor or
18 account holder is permitted to make
19 withdrawals by negotiable or transfer-
20 able instrument, payment orders of
21 withdrawal, telephone or other elec-
22 tronic media transfers, or other simi-
23 lar items for the purpose of making
24 payments or transfers to third parties
25 or others; and

1 " (III) on which the insured de-
2 pository institution does not reserve
3 the right to require advance notice of
4 an intended withdrawal."; and

5 (2) in subparagraph (C), by striking "subpara-
6 graph (B)" and inserting "subparagraph (B)(i)".

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall take effect on December 31, 2010.

Page 388, after line 16, insert the following new sec-
tion (and redesignate subsequent sections accordingly):

← INSERT
RIDER (C)

9 **SEC. 341. MUTUAL NATIONAL BANKS AND FEDERAL MU-**
10 **TUAL BANK HOLDING COMPANIES AUTHOR-**
11 **IZED.**

12 (a) IN GENERAL.—Chapter one of title LXII of the
13 Revised Statutes of the United States (12 U.S.C. 21 et
14 seq.) is amended by inserting after section 5133 the fol-
15 lowing new sections:

16 **"SEC. 5133A. MUTUAL NATIONAL BANKS.**

17 "(a) IN GENERAL.—Notwithstanding the section des-
18 ignated the 'Third' of section 5134, in order to provide
19 mutual institutions for the deposit of funds, the extension
20 of credit, and provision of other services, the Comptroller
21 of the Currency may charter mutual national banks either
22 de novo or through a conversion of any insured depository
23 institution or any State mutual bank or credit union, sub-

Rider ~~B~~ C

RIDER C

(c) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)), as amended by subsection (a), is amended—

(1) in subparagraph (B)—

(A) by striking “DEPOSIT.—” and all that follows through “clause (ii), the net amount” and inserting “DEPOSIT.—The net amount”; and

(B) by striking clauses (ii) and (iii); and

(2) in subparagraph (C), by striking “subparagraph (B)(i)” and inserting “subparagraph (B)”.

1 ject to regulations prescribed by the Comptroller of the
2 Currency in accordance with this section. The powers con-
3 ferred by this section are intended to provide for the cre-
4 ation and maintenance of mutual national banks as bodies
5 corporate existing in perpetuity for the benefit of their de-
6 positors and the communities in which they operate.

7 “(b) REGULATIONS.—

8 “(1) REGULATIONS OF THE COMPTROLLER.—

9 The Comptroller of the Currency is authorized to
10 prescribe appropriate regulations for the organiza-
11 tion, incorporation, examination, operation, and reg-
12 ulation of mutual national banks. Except to the ex-
13 tent that such existing regulations conflict with sec-
14 tions 5133A and 5133B, mutual national banks
15 shall be subject to the regulations of the Director of
16 the Office of Thrift Supervision governing corporate
17 organization, governance, and conversion of mutual
18 institutions, as in effect on the date of the enact-
19 ment of the Restoring American Financial Stability
20 Act of 2010, including parts 543, 544, 546, 563b,
21 and 563c of chapter V of title 12, Code of Federal
22 Regulations (as in effect on that date), for up to 3
23 years beginning on the date of the enactment of the
24 Restoring American Financial Stability Act of 2010.

1 “(2) APPLICABILITY OF CAPITAL STOCK RE-
2 QUIREMENTS.—The Comptroller of the Currency
3 shall prescribe regulations regarding the manner in
4 which requirements of this title with respect to cap-
5 ital stock, and limitations imposed on national banks
6 under this title based on capital stock, shall apply to
7 mutual national banks.

8 “(c) CONVERSIONS.—

9 “(1) CONVERSION OF A MUTUAL DEPOSITORY
10 TO A MUTUAL NATIONAL BANK.—Subject to such
11 regulations as the Comptroller of the Currency may
12 prescribe for the protection of depositors' rights and
13 for any other purpose the Comptroller of the Cur-
14 rency may consider appropriate, any mutual deposi-
15 tory may convert to a mutual national bank by filing
16 with the Comptroller of the Currency a notice of its
17 election to convert on a specified date that is not
18 earlier than 30 days after the date on which the no-
19 tice is filed, and the mutual depository shall be con-
20 verted to a mutual national bank charter on the date
21 specified in the notice.

22 “(2) CONVERSION TO STOCK NATIONAL
23 BANK.—Subject to such regulations as the Comp-
24 troller of the Currency may prescribe for the protec-
25 tion of depositors' rights and for any other purpose

1 the Comptroller of the Currency may consider ap-
2 propriate, any national bank that is organized in the
3 mutual form under subsection (a) may reorganize as
4 a stock national bank.

5 “(3) CONVERSION TO STATE BANKS.—Any na-
6 tional mutual bank may convert to a State bank
7 charter in accordance with regulations prescribed by
8 the Comptroller of the Currency and applicable
9 State law.

10 “(d) TERMINATING MUTUALITY.—If a mutual na-
11 tional bank elects to terminate mutuality, it must do so
12 by—

13 “(1) liquidating; or

14 “(2) converting to a national banking associa-
15 tion operating in stock form.

16 “(e) STATUS AND RIGHTS OF MEMBERS.—

17 “(1) In general, the status of a member is pri-
18 marily that of a depositor and secondarily that of a
19 holder of a contingent right to participate in the eq-
20 uity of a mutual national bank upon a liquidation or
21 conversion.

22 “(2) Each member of a mutual national bank
23 shall have the following rights:

1 “(A) Such rights as may be agreed upon,
2 by contract, between the member and the mu-
3 tual national bank.

4 “(B) The right to vote for members of the
5 board of directors of the mutual national bank.

6 “(C) The right to attend any meeting of
7 members properly called by the board of direc-
8 tors of a mutual national bank.

9 “(D) In the event the board of directors,
10 in its sole discretion, determines a conversion of
11 a mutual national bank to a national banking
12 association operating in stock form is in the
13 best interests of the community in which the
14 bank operates and the members approve the
15 conversion through a special proxy, then the
16 members as of a record date set by the board
17 of directors shall have the first right to sub-
18 scribe for and purchase stock in the converted
19 bank.

20 “(E) In the event the board of directors, in
21 its sole discretion, determines a liquidation of
22 the mutual national bank is in the best inter-
23 ests of the community in which the bank oper-
24 ates and the members approve the liquidation,
25 or if for any other reason the bank is liquidated

1 by operation of law, then the members as of the
2 date of liquidation shall have the right to have
3 credited to their accounts, on a pro rata basis,
4 any residual assets left after the liquidation of
5 the mutual national bank.

6 “(3) In the consideration of all questions re-
7 quiring action by the members of a mutual national
8 bank, the bank may provide in its charter that each
9 member shall be permitted (i) one vote per member,
10 or (ii) to cast one vote for each \$100, or fraction
11 thereof, of the withdrawal value of the member's ac-
12 count, but not more than 1,000 votes per member.

13 “(f) PROXIES.—

14 “(1) A member may give, in writing or elec-
15 tronically, a perpetual proxy to a committee of the
16 board of directors of a mutual depository, provided
17 that the member may revoke such a proxy in writing
18 or electronically, with such revocation to take effect
19 after 6 business days.

20 “(2) Such proxies may be used to vote on any
21 issue requiring approval of the members, including
22 the conversion of a mutual depository into a mutual
23 national bank and the reorganization of a mutual
24 national bank into a Federal mutual bank holding
25 company, except that, without a prior finding by the

1 regulator of the mutual national bank that such ac-
2 tion is needed to avoid loss to the Federal Deposit
3 Insurance Corporation's deposit insurance fund or to
4 protect the stability of the United States financial
5 system, such proxies may not be used to vote in
6 favor of—

7 “(A) terminating mutuality for a mutual
8 national bank or a Federal mutual bank holding
9 company;

10 “(B) permitting the modification of a Fed-
11 eral mutual bank holding company; or

12 “(C) issuing mutual capital certificates
13 (except when used to found a mutual national
14 bank or a Federal mutual bank holding com-
15 pany de novo).

16 “(3) Proxies given by a member, in writing or
17 electronically, to management of, or to a committee
18 of the board of directors of, a mutual depository
19 shall not be deemed to have been revoked solely be-
20 cause of, and shall continue to exist following, a con-
21 version to a mutual national bank and any concu-
22 rent or subsequent reorganization to a Federal mu-
23 tual bank holding company.

24 “(g) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 “(1) INSURED DEPOSITORY INSTITUTION.—The
2 term ‘insured depository institution’ has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act.

5 “(2) MUTUAL NATIONAL BANK.—The term
6 ‘mutual national bank’ means a national banking as-
7 sociation that operates in mutual form and is char-
8 tered by the Comptroller of the Currency under this
9 section.

10 “(3) MUTUAL DEPOSITORY.—The term ‘mutual
11 depository’ means a depository institution that is or-
12 ganized in non-stock form, including a Federal non-
13 stock depository and any form of non-stock depository
14 provided for under State law, the deposits of
15 which are insured by an instrumentality of the Fed-
16 eral Government.

17 “(4) MUTUALITY.—The term ‘mutuality’ means
18 the quality of being an insured depository institution
19 organized under a Federal or State law providing for
20 the organization of non-stock depository institutions,
21 or a holding company organized under a Federal or
22 State law providing for the organization of non-stock
23 entities that control one or more depository institu-
24 tions.

1 “(5) MEMBER.—The term ‘member’ means
2 each tax-liable depositor in a mutual depository’s
3 savings, demand, or other authorized depository ac-
4 counts and each tax-liable depositor in such an ac-
5 count in a depository subsidiary of a Federal mutual
6 bank holding company.

7 “(6) TAX LIABLE DEPOSITOR.—The term ‘tax
8 liable depositor’ means the single person responsible
9 for paying any Federal taxes due on any interest
10 paid on any deposits held within any savings, de-
11 mand, or other authorized depository account or ac-
12 counts with any mutual depository.

13 “(7) MEMBERSHIP RIGHTS.—The term ‘mem-
14 bership rights’ means the rights of each member
15 under this section.

16 “(h) CONFORMING REFERENCES.—Unless otherwise
17 provided by the Comptroller of the Currency—

18 “(1) any reference in any Federal law to a na-
19 tional bank operating in stock form, including a ref-
20 erence to the term ‘national banking association’,
21 ‘member bank’, ‘national bank’, ‘national associa-
22 tion’, ‘bank’, ‘insured bank’, ‘insured depository in-
23 stitution’, or ‘depository institution’, shall be deemed
24 to refer also to a mutual national bank;

1 “(2) any reference in any Federal law to the
2 term ‘board of directors’, ‘director’, or ‘directors’ of
3 a national bank operating in stock form shall be
4 deemed to refer also to the board of a mutual na-
5 tional bank; and

6 “(3) any terms in Federal law that may apply
7 only to a national bank operating in stock form, in-
8 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
9 ‘capital stock’, ‘common stock’, ‘stock certificate’,
10 ‘stock certificates’, ‘certificates representing shares
11 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
12 class of stock’, ‘cumulate such shares’, ‘par value’;
13 ‘preferred stock’ shall not apply to a mutual national
14 bank, unless the Comptroller of the Currency deter-
15 mines that the context requires otherwise.

16 “SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPA-
17 NIES.

18 “(a) REORGANIZATION OF MUTUAL NATIONAL BANK
19 AS A HOLDING COMPANY.—

20 “(1) IN GENERAL.—Subject to approval under
21 the Bank Holding Company Act of 1956, a mutual
22 national bank may reorganize so as to become a
23 Federal mutual bank holding company by submitting
24 a reorganization plan to the appropriate bank hold-
25 ing company regulator.

1 “(2) PLAN APPROVAL.—Upon the approval of
2 the reorganization plan by the appropriate bank
3 holding company regulator and the issuance of the
4 appropriate charters—

5 “(A) the substantial part of the mutual na-
6 tional bank's assets and liabilities, including all
7 of the bank's insured liabilities, shall be trans-
8 ferred to a national banking association, a ma-
9 jority of the shares of voting stock of which is
10 owned, directly or indirectly, by the mutual na-
11 tional bank that is to become a Federal mutual
12 bank holding company; and

13 “(B) the mutual national bank shall be-
14 come a Federal mutual bank holding company.

15 “(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS'
16 APPROVAL OF PLAN REQUIRED.—This subsection does
17 not authorize a reorganization unless—

18 “(1) a majority of the mutual national bank's
19 board of directors has approved the plan providing
20 for such reorganization; and

21 “(2) a majority of members has approved the
22 plan at a meeting held at the call of the directors
23 under the procedures prescribed by the bank's char-
24 ter and bylaws.

1 “(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—

2 To avoid terminating mutuality, a Federal mutual bank
3 holding company must own, directly or indirectly, a major-
4 ity of the shares of voting stock of each of its depository
5 subsidiaries.

6 “(d) NO TERMINATION OF MUTUALITY.—Neither a
7 reorganization of a mutual depository nor a modification
8 of a Federal mutual bank holding company shall cause a
9 termination of mutuality.

10 “(e) RETENTION OF CAPITAL.—In connection with a
11 transaction described in subsection (a), a mutual national
12 bank may, subject to the approval of the appropriate bank
13 holding company regulator, retain capital at the holding
14 company level to the extent that the capital retained at
15 the holding company level exceeds the amount of capital
16 required for the national banking association chartered as
17 a part of a transaction described in subsection (a) to meet
18 all relevant capital standards established by the Comp-
19 troller of the Currency for national banking associations.

20 “(f) TERMINATING MUTUALITY.—If a Federal mu-
21 tual bank holding company elects to terminate mutuality,
22 it must do so by either liquidating or converting to a bank
23 holding company operating in stock form.

24 “(g) MEMBERSHIP RIGHTS.—Holders of savings, de-
25 mand, or other authorized depository accounts in a depository

1 tory subsidiary of a Federal mutual bank holding company
2 shall have the same membership rights with respect to the
3 Federal mutual bank holding company as those holders
4 would have had if the depository subsidiary of the Federal
5 mutual bank holding company had been a mutual national
6 bank.

7 "(a) REGULATION.—A Federal mutual bank holding
8 company shall be—

9 "(1) chartered by the appropriate bank holding
10 company regulator and shall be subject to such regu-
11 lations as the appropriate bank holding company
12 regulator shall prescribe; and

13 "(2) regulated under the Bank Holding Com-
14 pany Act of 1956 on the same terms and subject to
15 the same limitations as any other company that con-
16 trols a bank.

17 "(i) CAPITAL IMPROVEMENT.—

18 "(1) PLEDGE OF STOCK OF NATIONAL BANK
19 SUBSIDIARY.—This section shall not prohibit a Fed-
20 eral mutual bank holding company from pledging all
21 or a portion of the stock of the national banking as-
22 sociation chartered as part of a transaction de-
23 scribed in subsection (a) to raise capital for such na-
24 tional banking association.

1 “(2) ISSUANCE OF NONVOTING SHARES.—This
2 section shall not prohibit a national banking associa-
3 tion chartered as part of a transaction described in
4 subsection (a) from issuing any nonvoting shares or
5 less than 50 percent of the voting shares of such
6 bank to any person other than the Federal mutual
7 bank holding company.

8 “(j) INSOLVENCY AND LIQUIDATION.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, the appropriate bank holding com-
11 pany regulator may file a petition under chapter 7
12 of title 11, United States Code, with respect to a
13 Federal mutual bank holding company upon—

14 “(A) the default of any national bank—

15 “(i) the stock of which is owned by
16 the Federal mutual bank holding company;
17 and

18 “(ii) that was chartered in a trans-
19 action described in subsection (a); or

20 “(B) a foreclosure on a pledge by the Fed-
21 eral mutual bank holding company described in
22 subsection (i)(1).

23 “(2) DISTRIBUTION OF NET PROCEEDS.—Ex-
24 cept as provided in paragraph (3), the net proceeds
25 of any liquidation of any Federal mutual bank hold-

1 ing company under paragraph (1) shall be trans-
2 ferred to persons who hold membership interests in
3 such Federal mutual bank holding company.

4 “(3) RECOVERY BY FDIC.—If the Federal De-
5 posit Insurance Corporation incurs a loss as a result
6 of the default of any insured bank subsidiary of a
7 Federal mutual bank holding company that is liq-
8 uidated under paragraph (1), the Federal Deposit
9 Insurance Corporation shall succeed to the interests
10 of the depositors of the bank as members in the
11 Federal mutual bank holding company, to the extent
12 of the Federal Deposit Insurance Corporation’s loss.

13 “(k) DEFINITIONS.—

14 “(1) FEDERAL MUTUAL BANK HOLDING COM-
15 PANY.—The term ‘Federal mutual bank holding
16 company’ means a holding company that is orga-
17 nized in mutual form and owns, directly or indi-
18 rectly, a majority of the shares of voting stock of
19 one or more depository subsidiaries of a Federal mu-
20 tual bank holding company.

21 “(2) DEPOSITORY SUBSIDIARY OF A FEDERAL
22 MUTUAL BANK HOLDING COMPANY.—The term ‘de-
23 pository subsidiary of a Federal mutual bank hold-
24 ing company’ means a depository institution orga-
25 nized in stock form that is insured by the Federal

1 Deposit Insurance Corporation, the majority of the
2 shares of voting stock of which are owned by the
3 Federal mutual bank holding company or its wholly
4 owned subsidiaries and none of the shares of stock
5 of which are pledged or otherwise subjected to lien
6 except as permitted in subsection (i).

7 “(3) REORGANIZATION OF A MUTUAL DEPOSIT-
8 TORY.—The term ‘reorganization of a mutual depos-
9 itory’ means the conversion of a mutual depository
10 into a depository subsidiary of a Federal mutual
11 bank holding company.

12 “(4) MODIFICATION OF A FEDERAL MUTUAL
13 BANK HOLDING COMPANY.—The term ‘modification
14 of a Federal mutual bank holding company’ means
15 either: (A) the sale of shares of common or preferred
16 stock in a depository subsidiary of a Federal mutual
17 bank holding company to any party other than the
18 subsidiary’s parent Federal mutual bank holding
19 company or a wholly owned subsidiary of that par-
20 ent; or (B) the voluntary grant of a lien on shares
21 of common or preferred stock in a depository sub-
22 sidiary of a Federal mutual bank holding company.

23 “(5) DEFAULT.—With respect to a national
24 bank, the term ‘default’ means an adjudication or
25 other official determination by any court of com-

1 petent jurisdiction, the Comptroller of the Currency,
2 or other public authority pursuant to which a con-
3 servator, receiver, or other legal custodian is ap-
4 pointed for the national bank.

5 “(1) CONFORMING REFERENCES.—Unless otherwise
6 provided by the appropriate bank holding company regu-
7 lator—

8 “(1) any reference in any Federal law to a bank
9 holding company operating in stock form shall be
10 deemed to refer also to a Federal mutual bank hold-
11 ing company;

12 “(2) any reference in any Federal law to the
13 term ‘board of directors’, ‘director’, or ‘directors’ of
14 a national bank operating in stock form shall be
15 deemed to refer also to the board of a Federal mu-
16 tual bank holding company; and

17 “(3) any terms in Federal law that may apply
18 only to a national bank operating in stock form, in-
19 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
20 ‘capital stock’, ‘common stock’, ‘stock certificate’,
21 ‘stock certificates’, ‘certificates representing shares
22 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
23 class of stock’, ‘cumulate such shares’, ‘par value’,
24 ‘preferred stock’ shall not apply to a Federal mutual
25 bank holding company, unless the appropriate bank

1 holding company regulator determines that the con-
2 text requires otherwise.”.

3 (b) LIMITATION ON FEDERAL REGULATION OF
4 STATE BANKS.—Except as otherwise provided in Federal
5 law, the Comptroller of the Currency, the Board of Gov-
6 ernors of the Federal Reserve System, and the Federal
7 Deposit Insurance Corporation may not adopt or enforce
8 any regulation that contravenes the corporate governance
9 rules prescribed by State law or regulation for State banks
10 unless the Director, Board, or Corporation finds that the
11 Federal regulation is necessary to assure the safety and
12 soundness of the State banks.

13 (c) TECHNICAL AMENDMENT.—The table of sections
14 for chapter one of title LXII of the Revised Statutes of
15 the United States (12 U.S.C. 21 et seq.) is amended by
16 inserting after the item relating to section 5133 the fol-
17 lowing new items:

“5133A. Mutual national banks.

“5133B. Federal mutual bank holding companies.”.

18 (d) APPROPRIATE FEDERAL BANKING AGENCY FOR
19 FEDERAL MUTUAL BANK HOLDING COMPANIES.—Sec-
20 tion 3(q)(1) of the Federal Deposit Insurance Act (12
21 U.S.C. 1813(q)(2)) is amended by inserting after subpara-
22 graph (F) the following new subparagraph:

23 “(G) supervisory or regulatory proceedings
24 arising from the authority given to the appro-

1 prate bank holding company regulator under
2 section 5133B of the Revised Statutes of the
3 United States.”.

4 (e) MUTUAL HOLDING COMPANY CONVERSION.—

5 (1) IN GENERAL.—Any mutual holding com-
6 pany, including any form of mutual depository hold-
7 ing company provided for under State law, may con-
8 vert to a Federal mutual bank holding company by
9 filing with the appropriate bank holding company
10 regulator a notice of its election to convert on a
11 specified date that is not earlier than 30 days after
12 the date on which the notice is filed, and the mutual
13 holding company shall be converted to a Federal mu-
14 tual holding company charter on the date specified
15 in the notice.

16 (2) DEFINITIONS.—For purposes of this sub-
17 section, the following definitions shall apply:

18 (A) FEDERAL MUTUAL BANK HOLDING
19 COMPANY.—The term “Federal mutual bank
20 holding company” has the same meaning as in
21 section 5133B of the Revised Statutes of the
22 United States (as added by this section); and

23 (B) MUTUAL HOLDING COMPANY.—The
24 term “mutual holding company” has the same
25 meaning as in section 10(o)(10)(A) of the

- 1 Home Owners Loan Act as in effect on the day
 2 before the date of enactment of this Act.
 3 (f) ~~EFFECTIVE DATE~~—This section shall take effect
 4 on the date of enactment of this Act.

Page 385, line 10, after the period insert the following new sentence: "The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code."

or an equivalent designation
standards for
 Page 385, line 18, insert ", including the ~~coordinating~~ *coordinating* ~~tion~~ of technical assistance to such businesses" before the period.

Page 385, after line 20, insert the following new paragraph:

- 5 (3) OTHER DUTIES.—Each Director shall ad-
 6 vise the agency administrator on the impact of the
 7 policies and regulations of the agency on minority-
 8 owned and women-owned businesses.

~~Page 390, line 15, strike "and" after the semicolon.~~

~~Page 390, line 16, strike the period and insert "; and".~~

~~Page 390, after line 16, insert the following new subparagraph:~~

1

~~(J) the Office of National Insurance.~~



Additional technical amendment for Technical/Manager's Amendment to Title III

On page 3, line 16 of the Technical/Manager's Amendment to Title III

On page 383, strike lines 3-10 and insert --

‘ “(2) ACTING OFFICIALS MAY SERVE. – In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.” ; and’

On page 383, line 12, strike the period and insert “or of the Consumer Financial Protection Bureau.”.

RESTORING AMERICAN FINANCIAL STABILITY
CONFERENCE AMENDMENT

On page 385 of the Conference Base Text, between lines 20 and 21, insert the following:

- 1 (3) RULE OF CONSTRUCTION.—Nothing in
- 2 paragraph (2)(C) may be construed to mandate any
- 3 requirement on or otherwise affect the lending poli-
- 4 cies and practices of any regulated entity, or to
- 5 imply or require any specific action based on the
- 6 findings of the assessment.



As Passed
by the Senate Conference

June 15, 2010

**** Draft Senate Counteroffer ****

Title: Title IV

Matter: Regulation of Advisers to Private Funds and Others

1. Add House provision that requires registration with the SEC of Commodity Trading Advisers (CTAs) who advise private funds (House Bill § 5003, page 1204, lines 1-7)

Reject.

2. Add House provision which requires disclosure of certain private fund information to investors, prospective investors, counterparties and creditors. (House bill § 5004, page 1209, lines 1-10)

Reject.

3. Add new provision which provides a savings clause to ensure that the new registration requirements for advisers to private funds under the Act does not absolve these advisers of their existing registration requirements, as applicable, under the Commodity Exchange Act. (Add new language to Senate bill § 406, page 463)

Accept

Accept **4. Strike Senate exemption of investment advisers to private equity firms from registration with the SEC (Senate bill § 408, page 464)**

Counterproposal to exempt private equity fund advisers with more than \$1 billion in assets under management

5. Add House provision to exempt investment advisers of private funds with less than \$150 million in assets under management (House bill § 5007, page 1212)

Accept

6. Amend Senate exemption for the investment advisers of venture capital firms. Though exempt from registration with the SEC, require the advisers of venture capital firms to keep records and provide reports to the SEC (House bill § 5006, page 1212, lines 3-8)

Accept

7. Strike and replace Senate provision defining state and federal responsibilities for investment advisers. Replace with House provision that requires investment advisers who qualify to register with their home state (i.e. less than \$100 million in assets under management) to register

with the SEC should their home state not perform examinations. (Strike Senate bill § 410 page 466 and replace with House bill § 7418, page 1377)

Counterproposal – Reed amendment 4078 from Senate Floor

8. Strike and replace Senate provision for custodial assets. Replace with House provision that prohibits an investment adviser from providing custodial services for customer accounts. The SEC may provide an exception from this prohibition if the customer assets are verified by an entity that has a fiduciary duty to the client. (Strike Senate bill § 411, page 466 and replace with House bill § 7419, page 1378)

Reject

9. Add House provision which requires the SEC to index for inflation the dollar amount measures to determine who is a qualified client for purposing of paying a performance fee to a registered investment adviser. It also calls for a rounding to the nearest \$100,000 when making the determination. (House bill § 5011, page 1216)

Accept

HOUSE PROPOSED AMENDMENTS TO TITLE IV

Page 454, strike lines 10 and 11 and insert the following:

CFTC registrants

#1 REJECT

- 1 (4) in paragraph (6)—
- 2 (A) in subparagraph (A), by striking “or”;
- 3 (B) in subparagraph (B), by striking the
- 4 period at the end and adding “; or”; and
- 5 (C) by adding at the end the following new
- 6 subparagraph:
- 7 “(C) a private fund; or”; and

Page 459, insert after line 22 the following (and redesignate succeeding paragraphs accordingly):

#2 REJECT

- 8 (8) DISCLOSURE OF PRIVATE FUND INFORMA-
- 9 TION.—An investment adviser registered under this
- 10 Act shall provide such reports, records, and other
- 11 documents to investors, prospective investors,
- 12 counterparties, and creditors, of any private fund
- 13 advised by the investment adviser as the Commis-
- 14 sion, by rule or regulation, may prescribe as nec-
- 15 essary or appropriate in the public interest and for

- 1 the protection of investors or for the assessment of
2 systemic risk.

Page 463, line 6, strike "The" and insert "(1) The".

Page 463, line 16, strike the closed quotation marks and following period and after such line insert the following (and redesignate succeeding sections and conform the table of contents accordingly):

- #3
ACCEPT
- 3 "(2) Nothing in this Act shall relieve any per-
4 son of any obligation or duty, or affect the avail-
5 ability of any right or remedy available to the Com-
6 modity Futures Trading Commission or any private
7 party, arising under the Commodity Exchange Act
8 (7 U.S.C. 1 et seq.) governing commodity pools,
9 commodity pool operators, or commodity trading ad-
10 visors."

#5
ACCEPT

11 SEC. 407. EXEMPTION OF AND REPORTING BY CERTAIN
12 PRIVATE FUND ADVISERS.

13 Section 203 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b-3), as amended by section 5006, is further
15 amended by adding at the end the following new sub-
16 sections:

- 17 "(m) EXEMPTION OF AND REPORTING BY CERTAIN
18 PRIVATE FUND ADVISERS.—

#3
Accept

1 “(1) IN GENERAL.—The Commission shall pro-
2 vide an exemption from the registration require-
3 ments under this section to any investment adviser
4 of private funds, if each of such investment adviser
5 acts solely as an adviser to private funds and has as-
6 sets under management in the United States of less
7 than \$150,000,000.

8 “(2) REPORTING.—The Commission shall re-
9 quire investment advisers exempted by reason of this
10 subsection to maintain such records and provide to
11 the Commission such annual or other reports as the
12 Commission determines necessary or appropriate in
13 the public interest or for the protection of investors.

REJECT #7

14 “(n) REGISTRATION AND EXAMINATION OF MID-
15 SIZED PRIVATE FUND ADVISERS.—In prescribing regula-
16 tions to carry out the requirements of this section with
17 respect to investment advisers acting as investment advis-
18 ers to mid-sized private funds, the Commission shall take
19 into account the size, governance, and investment strategy
20 of such funds to determine whether they pose systemic
21 risk, and shall provide for registration and examination
22 procedures with respect to the investment advisers of such
23 funds which reflect the level of systemic risk posed by such
24 funds.”.

Page 463, line 17, insert "AND REPORTING BY" after "EXEMPTION OF".

(VENTURE
CAPITAL
FUNDS)

Page 464, line 4, insert before the closed quotation mark the following: "The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors."

Beginning on page 464, strike line 5 through page 465, line 6.

Page 466, strike lines 1 through 17 and insert the following:

1 SEC. 410. INVESTMENT ADVISERS SUBJECT TO STATE AU-
2 THORITIES.

3 Section 203A(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b-3a(a)) is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

7 (2) by inserting after paragraph (1) the fol-
8 lowing new paragraph:

9 "(2) TREATMENT OF CERTAIN MID-SIZED IN-
10 VESTMENT ADVISERS.—Notwithstanding paragraph
11 (1), an investment adviser that is not exempt from
12 registration under section 203 and—

1 “(A) is regulated and examined, or re-
2 quired to be regulated and examined, in the
3 State where it maintains its principal office and
4 place of business; and

5 “(B) has assets under management be-
6 tween—

7 “(i) the amount specified under sub-
8 paragraph (A) of paragraph (1), as such
9 amount may have been adjusted by the
10 Commission pursuant to that subpara-
11 graph; and

12 “(ii) \$100,000,000, or such higher
13 amount as the Commission may, by rule,
14 deem appropriate in accordance with the
15 purposes of this title,

16 shall register with, and be subject to examina-
17 tion by, such State. The Commission shall pub-
18 lish a list of the States that regulate and exam-
19 ine, or require regulation and examination of,
20 investment advisers to which the requirements
21 of this paragraph apply. If no State in which an
22 investment adviser described in subparagraph
23 (B) is registered conducts such an examination,
24 the investment adviser must register with the
25 Commission. If, pursuant to this paragraph, an

#8
REJECT

1 investment adviser would be required to register
2 with 5 or more States, then the adviser may
3 maintain its registration with the Commis-
4 sion."

Page 466, strike lines 18 through 21 and insert the following (and conform the table of contents accordingly):

#8
REJECT(KEEP
SENATE)

5 **SEC. 411. CUSTODIAL REQUIREMENTS.**

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of the enactment of this title, the Securities and Ex-
8 change Commission shall adopt a rule pursuant to its au-
9 thority under section 211(a) of the Investment Advisers
10 Act of 1940 making it unlawful under section 206(4) of
11 that Act for an investment adviser registered under such
12 Act to have custody of funds or securities of a client, un-
13 less—

14 (1) the funds and securities are maintained
15 with a qualified custodian either in a separate ac-
16 count for each client under the client's name, or in
17 accounts that contain only client funds and securi-
18 ties under the name of the investment adviser as
19 agent or trustee for the client; and

20 (2) the qualified custodian does not directly or
21 indirectly provide investment advice with respect to
22 such funds or securities.

#8
REJECT

(b) EXCEPTIONS.—The rule adopted under subsection (a) shall include such exceptions as the Commission determines in the public interest and consistent with the protection of investors. Any exemption granted under this subsection shall ensure that at least once per year, a client described in subsection (a) shall receive a report from an independent entity with a fiduciary responsibility to the client to verify that the assets in the client's account are in accord with those stated on the client's account statement.

(c) NO LIMITS ON OTHER ACTIONS.—Nothing in this section shall be construed to limit other actions the Securities and Exchange Commission may take under this Act to require the protection of client assets.

Page 472, after line 3, insert the following new section (and redesignate the succeeding section and conform the table of contents accordingly):

#9
ACCEPT

SEC. 416. QUALIFIED CLIENT STANDARD.

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the end the following: "With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order,

#9
ACCEPT

1 not later than 1 year after the date of the enactment of
2 the Private Fund Investment Advisers Registration Act of
3 2009, and every 5 years thereafter, adjust for the effects
4 of inflation on such test. Any such adjustment that is not
5 a multiple of \$100,000 shall be rounded to the nearest
6 multiple of \$100,000.”



**Restoring American Financial Stability
Conference Amendment (Senate
Counteroffer)**

- 1 On page 464, line 16, insert before the period the
- 2 following: “, unless the value of the assets under manage-
- 3 ment by such fund or funds exceeds \$1,000,000,000”.

Restoring American Financial Stability Conference Amendment (Counteroffer)

1 Strike section 410 and insert the following:

2 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
3 **THRESHOLD FOR FEDERAL REGISTRATION**
4 **OF INVESTMENT ADVISERS.**

5 Section 203A(a) of the of the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b-3a(a)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3); and

9 (2) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) **TREATMENT OF MID-SIZED INVESTMENT**
12 **ADVISERS.—**

13 “(A) **IN GENERAL.—**No investment adviser
14 described in subparagraph (B) shall register
15 under section 203, unless the investment ad-
16 viser is an adviser to an investment company
17 registered under the Investment Company Act
18 of 1940, or a company which has elected to be
19 a business development company pursuant to
20 section 54 of the Investment Company Act of
21 1940, and has not withdrawn the election, ex-

1 cept that, if by effect of this paragraph an in-
2 vestment adviser would be required to register
3 with 15 or more States, then the adviser may
4 register under section 203.

5 “(B) COVERED PERSONS.—An investment
6 adviser described in this subparagraph is an in-
7 vestment adviser that—

8 “(i) is required to be registered as an
9 investment adviser with the securities com-
10 missioner (or any agency or office per-
11 forming like functions) of the State in
12 which it maintains its principal office and
13 place of business and, if registered, would
14 be subject to examination as an investment
15 adviser by any such commissioner, agency,
16 or office; and

17 “(ii) has assets under management
18 of—

19 “(I) not less than the amount
20 specified under subparagraph (A) of
21 paragraph (1), as such amount may
22 have been adjusted by the Commission
23 pursuant to that subparagraph; and

24 “(II) not more than
25 \$100,000,000, or such higher amount

1 as the Commission may, by rule, deem
2 appropriate in accordance with the
3 purposes of this title.”.

As Passed
by the Senate
Conference

**** Senate Counteroffer ****

Title: Title V

Matter: Federal Insurance Office

The Senate accepts the following House proposals for amendments to the Base text:

1. Change the office name from "National Insurance Office" to "Federal Insurance Office".
2. Add House requirement that Treasury coordinate with the Secretary of Health & Human Services in determining which lines of insurance are health insurance & therefore excluded from FIO authority.
3. Add House provisions to include United States Trade Representative and the relevant congressional committees (FSC, W&M, SBC, SFC) in process by which Treasury negotiates, finalizes and enforces international insurance agreements. This package of related changes includes:
 - Requirement that Treasury and USTR jointly negotiate international insurance agreements;
 - Requirement for Congressional "consultation and lay over" before international insurance agreements can take effect.
4. Add House provision requiring FIO to make Paperwork Reduction Act showing before requiring insurers to produce information. Senate base text requires FIO to "coordinate" with State & Federal agencies/regulators to determine if desired information is available through sources other than directly from insurers, but Senate version does not require FIO to get information from alternate source if available.
5. Add study on U.S. and Global Reinsurance Markets.

The Senate does not accept the following House proposals for amendments to the Base text:

1. Requirement for de novo judicial review of FIO administrative finding.
2. Replacement of Senate definition of "International Insurance Agreement on Prudential Measures" with House "covered agreement" definition.

Senate Counteroffer

FINANCIAL REFORM CONFERENCE:

~~HOUSE OFFER FOR TITLE V~~

{Page and line numbers refer to Conference Base Text}

Page 472, strike line 13 and 14 and insert the following:

1 **Subtitle A—Federal Insurance**
2 **Office**

Page 472, lines 16 and 17, strike "Office of National Insurance" and insert "Federal Insurance Office".

Page 472, strike lines 18 and 19, and insert the following:

3 **SEC. 502. FEDERAL INSURANCE OFFICE.**

Page 473, strike line 3 and insert the following:

4 **"SEC. 313. FEDERAL INSURANCE OFFICE."**

Page 473, lines 5 and 6, strike "Office of National Insurance" and insert "Federal Insurance Office".

Page 474, lines 24 and 25, strike "International Insurance Agreements on Prudential Matters" and insert "covered agreements (as such term is defined in subsection (r))".

Page 475, lines 3 and 4, strike "~~International Insurance Agreements on Prudential Matters~~" and insert "~~covered agreements~~".

Page 475, after line 15 insert the following:

1 “(3) ADVISORY CAPACITY ON COUNCIL.—The
2 Director shall serve in an advisory capacity on the
3 Financial Stability Oversight Council established
4 under the Financial Stability Act of 2010.”.

Page 475, lines 17 and 18, strike “as such insurance is determined by the Secretary” and insert “as determined by the Secretary in coordination with the Secretary of Health and Human Services”.

Page 477, strike lines 4 through 18 and insert the following:

5 “(4) ADVANCE COORDINATION.—Before col-
6 lecting any data or information under paragraph (2)
7 from an insurer, or affiliate of an insurer, the Office
8 shall coordinate with each relevant Federal agency
9 and State insurance regulator (or other relevant
10 Federal or State regulatory agency, if any, in the
11 case of an affiliate of an insurer) and any publicly
12 available sources to determine if the information to
13 be collected is available from, and may be obtained
14 in a timely manner by, such Federal agency or State

1 insurance regulator, individually or collectively, other
2 regulatory agency, or publicly available sources. If
3 the Director determines that such data or informa-
4 tion is available, and may be obtained in a timely
5 manner, from such an agency, regulator, regulatory
6 agency, or source, the Director shall obtain the data
7 or information from such agency, regulator, regu-
8 latory agency, or source. If the Director determines
9 that such data or information is not so available, the
10 Director may collect such data or information from
11 an insurer (or affiliate) only if the Director complies
12 with the requirements of subchapter I of chapter 35
13 of title 44, United States Code (relating to Federal
14 information policy; commonly known as the Paper-
15 work Reduction Act) in collecting such data or infor-
16 mation. Notwithstanding any other provision of law,
17 each such relevant Federal agency and State insur-
18 ance regulator or other Federal or State regulatory
19 agency is authorized to provide to the Office such
20 data or information.”.

Page 480, line 7, after “preempted” insert “pursu-
ant to this section or section 314”.

Page 480, lines 12 through 14, strike “an inter-
national insurance agreement on prudential measures”
and insert “a covered agreement”.

Page 480, lines 17 and 18, strike "International Insurance Agreements on Prudential Matters" and insert "covered agreements".

Page 480, after line 25, insert the following new clause (and redesignate succeeding clauses accordingly):

1 “(ii) notify and consult with the
2 United States Trade Representative re-
3 garding any potential inconsistency or pre-
4 emption;”.

Page 481, lines 6 and 7, strike "International Insurance Agreements on Prudential Matters" and insert "covered agreements".

Page 482, strike lines 3 through 7 and insert the following:

5 “(iii) notify the Committees on Finan-
6 cial Services and Ways and Means of the
7 House of Representatives and the Commit-
8 tees on Banking, Housing, and Urban Af-
9 fairs and Finance of the Senate.”.

Page 482, line 25, before the period insert the following: “, except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo”.

Page 484, strike lines 12 through 22 and insert the following new subsections (and redesignate succeeding subsections accordingly):

1 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
2 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
3 tion or section 314 shall be construed to limit the author-
4 ity of any Federal financial regulatory agency, including
5 the authority to develop and coordinate policy, negotiate,
6 and enter into agreements with foreign governments, au-
7 thorities, regulators, and multi-national regulatory com-
8 mittees and to preempt State measures to affect uni-
9 formity with international regulatory agreements.

10 “(m) RETENTION OF AUTHORITY OF UNITED
11 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
12 tion or section 314 shall be construed to affect the author-
13 ity of the Office of the United States Trade Representative
14 pursuant to section 141 of the Trade Act of 1974 (19
15 U.S.C. 2171) or any other provision of law, including au-
16 thority over the development and coordination of United
17 States international trade policy and the administration
18 of the United States trade agreements program.

19 “(n) ANNUAL REPORTS TO CONGRESS.—

20 “(1) SECTION 313(f) REPORTS.—Beginning
21 September 30, 2011, the Director shall submit a re-
22 port on or before September 30 of each calendar

1 year to the President and to the Committees on Fi-
2 nancial Services and Ways and Means of the House
3 of Representatives and the Committees on Banking,
4 Housing, and Urban Affairs and Finance of the
5 Senate on any actions taken by the Office pursuant
6 to subsection (f) (regarding preemption of incon-
7 sistent State insurance measures).

8 “(2) INSURANCE INDUSTRY.—Beginning Sep-
9 tember 30, 2011, the Director shall submit a report
10 on or before September 30 of each calendar year to
11 the President and to the Committee on Financial
12 Services of the House of Representatives and the
13 Committee on Banking, Housing, and Urban Affairs
14 of the Senate on the insurance industry and any
15 other information as deemed relevant by the Direc-
16 tor or requested by such Committees.

17 “(o) REPORTS ON U.S. AND GLOBAL REINSURANCE
18 MARKET.—The Director shall submit to the Committee
19 on Financial Services of the House of Representatives and
20 the Committee on Banking, Housing, and Urban Affairs
21 of the Senate—

22 “(1) a report received not later than September
23 30, 2012, describing the breadth and scope of the
24 global reinsurance market and the critical role such

1 market plays in supporting insurance in the United
2 States; and

3 “(2) a report received not later than January 1,
4 2013, and updated not later than January 1, 2015,
5 describing the impact of Subtitle B of the Non-Ad-
6 mitted and Reinsurance Reform Act of 2010 on the
7 ability of State regulators to access reinsurance in-
8 formation for regulated companies in their jurisdic-
9 tions.”.

Page 488, lines 3 and 4, strike “National Associa-
tion of Insurance Commissioners” and insert “State in-
surance regulators”.

Page 488, line 11, before the period insert “and the
Secretary shall dedicate specific personnel to the Office”.

Page 488, after line 17, insert the following new
paragraph (and redesignate succeeding paragraphs ac-
cordingly):

10 “(2) COVERED AGREEMENT.—The term ‘cov-
11 ered agreement’ means a written bilateral or multi-
12 lateral recognition agreement that—
13 “(A) is entered into between the United
14 States and one or more foreign governments,
15 authorities, or regulatory entities; and

1 “(B) provides for recognition of prudential
2 measures with respect to the business of insur-
3 ance or reinsurance that achieves a level of pro-
4 tection for insurance or reinsurance consumers
5 that is substantially equivalent to the level of
6 protection achieved under State insurance or re-
 insurance regulation.”

Strike line 21 on page 488 and all that follows
through page 489, line 3, and insert the following new
paragraph:

Page 488,
after line 17,

and
re designate
succeeding
paragraphs
accordingly

8 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
9 CY.—The term ‘Federal financial regulatory agency’
10 means the Department of the Treasury, the Board
11 of Governors of the Federal Reserve System, the Of-
12 fice of the Comptroller of the Currency, the Office
13 of Thrift Supervision, the Securities and Exchange
14 Commission, the Commodity Futures Trading Com-
15 mission, the Federal Deposit Insurance Corporation,
16 the Federal Housing Finance Agency, or the Na-
17 tional Credit Union Administration.”

Page 489, lines 9 and 10, strike “Office of National Insurance” and insert “Federal Insurance Office”.

Page 490, strike lines 6 through 24 and insert the following:

1 "SEC. 314. ~~COVERED AGREEMENTS.~~

2 "(a) AUTHORITY.—The Secretary and the United
3 States Trade Representative are authorized, jointly, to ne-
4 gotiate and enter into ~~covered agreements~~ on behalf of the
5 United States.

6 "(b) REQUIREMENTS FOR CONSULTATION WITH
7 CONGRESS.—

8 "(1) IN GENERAL.—Before initiating negotia-
9 tions to enter into ~~a covered agreement~~ under sub-
10 section (a), during such negotiations, and before en-
11 tering into any such agreement, the Secretary and
12 the United States Trade Representative shall jointly
13 consult with the Committee on Financial Services
14 and the Committee on Ways and Means of the
15 House of Representatives and the Committee on
16 Banking, Housing, and Urban Affairs and the Com-
17 mittee on Finance of the Senate.

18 "(2) SCOPE.—The consultation described in
19 paragraph (1) shall include consultation with respect
20 to—

21 "(A) the nature of the agreement;

22 "(B) how and to what extent the agree-
23 ment will achieve the applicable purposes, poli-
24 cies, priorities, and objectives of section 313
25 and this section; and

international / insurance agreement

*on
prudential
measures*

*an international
insurance
agreement
on prudential
measures*

1 “(C) the implementation of the agreement,
2 including the general effect of the agreement on
3 existing State laws.

4 “(c) SUBMISSION AND LAYOVER PROVISIONS.—
5 ~~covered agreement~~ under subsection (a) may enter into
6 force with respect to the United States only if—

7 “(1) the Secretary and the United States Trade
8 Representative jointly submit to the congressional
9 committees specified in subsection (b)(1), on a day
10 on which both Houses of Congress are in session, a
11 copy of the final legal text of the agreement; and

12 “(2) a period of 90 calendar days beginning on
13 the date on which the copy of the final legal text of
14 the agreement is submitted to the congressional
15 committees under paragraph (1) has expired.”.

Page 491, after line 16, in the item relating to section 313, strike “Office of National Insurance” and insert “Federal Insurance Office”.

Page 507, after line 8, insert the following:

16 (15) STATE.—The term “State” includes any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, Guam, the
19 Northern Mariana Islands, the Virgin Islands, and
20 American Samoa.

Page 510, after line 19, insert the following:

- 1 (5) STATE.—The term “State” includes any
- 2 State of the United States, the District of Columbia,
- 3 the Commonwealth of Puerto Rico, Guam, the
- 4 Northern Mariana Islands, the Virgin Islands, and
- 5 American Samoa.



AMENDMENT TO HOUSE OFFER FOR TITLE V
OFFERED BY MR. WAXMAN OF CALIFORNIA

On page 2 of the House Offer, strike the instruction relating to page 475, lines 17 and 18 of the Conference Base Text, and insert the following:

Page 475, strike lines 16 through 21 and insert the following:

1 “(d) SCOPE.—The authority of the Office shall ex-
 2 tend to all lines of insurance except—

3 “(1) health insurance, as determined by the
 4 Secretary in coordination with the Secretary of
 5 Health and Human Services based on section 2791
 6 of the Public Health Service Act (42 U.S.C. 300gg-
 7 91);

8 “(2) long-term care insurance, except long-term
 9 care insurance that ~~includes~~ life or annuity insur-
 10 ance components, as determined by the Secretary in
 11 coordination with the Secretary of Health and
 12 Human Services, and in the case of long-term care
 13 insurance that ~~includes~~ such components the Sec-
 14 retary shall coordinate with the Secretary of Health

*is included
with*

1 and Human Services in performing the functions of
2 the Office; and
3 “(3) crop insurance, as established by the Fed-
4 eral Crop Insurance Act (7 U.S.C. 1501 et seq.).”.



As passed by the Senate Conferees

**** Draft Senate Counteroffer ****

Title: Title IX, Subtitle C

Matter: Improvements to the Regulation of Credit Rating Agencies

1. Add House provision to strike references to 'furnish' and replace with 'file' (and their derivations) in existing statute. Information that is "furnished" to the SEC is subject to a lower standard of accuracy and liability than information that is "filed" with the SEC (e.g. liability for misleading statements only attaches to those who 'file' documents with the SEC. (House bill § 6002, page 1219, lines 3-10, etc.)

Accept

2. Add House provisions concerning conflicts of interest. Provisions include an explicit prohibition of an NRSRO advising the issuer and rating that issuer's securities, a look-back requirement at the ratings of an analyst that switches jobs, and public notification of a job change by an analyst. (House bill pages 1231-1234 and page 1251)

2A (conflicts on consulting) *Counteroffer – Sense of the Senate that SEC should use its authority in Title 15E of the Exchange Act "to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to . . . the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor."*

2B (Look back) *Accept*

2C (SEC Employee Notification) *Accept*

3. **Strike and replace Senate provision** for state of mind in private actions of 'knowing and reckless'. **Replace with House provision** that states a gross negligence requirement for cases brought against NRSROs in violating the anti-fraud provisions of the securities laws and that standard is to be applied to NRSROs in the same manner as it is applied to other defendants in the same lawsuits under the securities laws. Statements made by NRSROs shall not be deemed forward-looking statements. An investor in a rated security can recover damages if the process of determining ratings is deemed grossly negligent and a substantial factor in the economic loss of the investor. (Strike Senate bill § 933, page 1171 and replace with House bill § 6003, page 1252).

Reject.

4. **Strike and replace Senate provision** that creates an SRO under the SEC that would assign responsibility for initial ratings of structured securities to a "qualified" NRSRO. **Replace with House provision** that commissions an SEC study to evaluate conflicts of interest, the metrics applied to determine the 'accuracy' of ratings, the use of an independent utility that assigns ratings for structured finance, and ability of an SRO-type entity to set appropriate fees to

compensate and provide incentives for accurate ratings. The SEC will have 1 year to conduct the study. The SEC will present to Congress recommendations for either regulatory or statutory changes that the SEC believes should be made to implement the findings. (Senate bill § 939D, page 1184 and replace with House bill § 6003, page 1252)

Counteroffer – study plus directing the SEC to set up a mechanism that would have credit rating assignments made without inappropriate influence arising from conflicts of interest present in the issuer pay model

5. Add House provision that eliminates the credit rating agency exemption from the Fair Disclosure rule when working with issuers. Reg FD mandates the full disclosure of material non-public information. (House bill § 6007, page 1254)

Reject.

7. Add House provision that eliminates the NRSRO exemption from expert liability under Section 11 of the securities laws (Rule 436(g)). (House bill § 6012, page 1264)

Reject.

**HOUSE PROPOSED AMENDMENTS TO SUBTITLE C
OF TITLE IX**

Page 1145, after line 11, insert the following (and redesignate succeeding paragraphs accordingly):

- 1 (1) in subsection (b)—
2 (A) in paragraph (1)(A), by striking “fur-
3 nished” and inserting “filed” and by striking
4 “furnishing” and inserting “filing”;
5 (B) in paragraph (1)(B), by striking “fur-
6 nishing” and inserting “filing”; and
7 (C) in the first sentence of paragraph (2),
8 by striking “furnish to” and inserting “file
9 with”;

Page 1147, after line 23, insert the following new subparagraph (and redesignate succeeding subparagraphs accordingly);

- 10 (C) in paragraph (2), by striking “fur-
11 nished to” and inserting “filed with”;

Page 1148, beginning on line 11, strike “redesignated,” and all that follows through line 12, and insert “redesignated—

#1
ACCEPT

1

(i) by striking "furnish" and inserting

2

"file"; and

3

(ii) by striking "or" at the end.

Page 1151, line 3, strike the closed quotation mark and following period and after such line insert the following:

4

"(4) LOOK-BACK REQUIREMENT.—

5

"(A) REVIEW BY THE NATIONALLY RECOG-

6

NIZED STATISTICAL RATING ORGANIZATION.—

7

Each nationally recognized statistical rating or-

8

ganization shall establish, maintain, and enforce

9

policies and procedures reasonably designed to

10

ensure that, in any case in which an employee

11

of a person subject to a credit rating of the na-

12

tionally recognized statistical rating organiza-

13

tion or the issuer, underwriter, or sponsor of a

14

security or money market instrument subject to

15

a credit rating of the nationally recognized sta-

16

tistical rating organization was employed by the

17

nationally recognized statistical rating organiza-

18

tion and participated in any capacity in deter-

19

mining credit ratings for the person or the se-

20

curities or money market instruments during

21

the 1-year period preceding the date an action

22

was taken with respect to the credit rating, the

#2a
ACCEPT

1 nationally recognized statistical rating organiza-
2 tion shall—

3 “(i) conduct a review to determine
4 whether any conflicts of interest of the em-
5 ployee influenced the credit rating; and

6 “(ii) take action to revise the rating if
7 appropriate, in accordance with such rules
8 as the Commission shall prescribe.

9 “(B) REVIEW BY COMMISSION.—

10 “(i) IN GENERAL.—The Commission
11 shall conduct periodic reviews of the poli-
12 cies described in subparagraph (A) and the
13 implementation of the policies at each na-
14 tionally recognized statistical rating orga-
15 nization to ensure they are reasonably de-
16 signed and implemented to most effectively
17 eliminate conflicts of interest.

18 “(ii) TIMING OF REVIEWS.—The Com-
19 mission shall review the code of ethics and
20 conflict of interest policy of each nationally
21 recognized statistical rating organization—

22 “(I) not less frequently than an-
23 nually; and

24 “(II) whenever such policies are
25 materially modified or amended.

1 “(5) REPORT TO COMMISSION ON CERTAIN EM-
2 PLOYMENT TRANSITIONS.—

3 “(A) REPORT REQUIRED.—Each nationally
4 recognized statistical rating organization shall
5 report to the Commission any case such organi-
6 zation knows or can reasonably be expected to
7 know where a person associated with such orga-
8 nization within the previous 5 years obtains em-
9 ployment with any obligor, issuer, underwriter,
10 or sponsor of a security or money market in-
11 strument for which the organization issued a
12 credit rating during the 12-month period prior
13 to such employment, if such employee—

14 “(i) was a senior officer of such orga-
15 nization;

16 “(ii) participated in any capacity in
17 determining credit ratings for such obligor,
18 issuer, underwriter, or sponsor; or

19 “(iii) supervised an employee de-
20 scribed in clause (ii).

21 “(B) PUBLIC DISCLOSURE.—Upon receiv-
22 ing such a report, the Commission shall make
23 such information publicly available.”

Page 1153, line 11, strike “and” and insert the fol-
lowing:

#2a
ACCEPT

1 (5) in subsection (k), by striking "furnish to"
2 and inserting "file with";

3 (6) in subsection (l)(2)(A)(i), by striking "fur-
4 nished" and inserting "filed"; and

Page 1153, line 12, strike "(5)" and insert "(7)".

Page 1171, line 9, strike the closed quotation mark
and following period and insert after such line the fol-
lowing:

#2
REJECT
OFFER
ANNEX A

5 "(u) PROHIBITED ACTIVITIES.—Beginning 180 days
6 from the date of enactment of the Investor Protection and
7 Securities Reform Act of 2010, it shall be unlawful for
8 a nationally recognized statistical rating organization, or
9 an affiliate of a nationally recognized statistical rating or-
10 ganization, or any person associated with a nationally rec-
11 ognized statistical rating organization, that provides a
12 credit rating for an issuer, underwriter, or placement
13 agent of a security to provide any non-rating service to
14 that issuer, underwriter, or placement agent in deter-
15 mining a credit rating, including—

16 "(1) risk management advisory services;

17 "(2) advice or consultation relating to any
18 merger, sales, or disposition of assets of the issuer;

ANNEX A
(House #2)

FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX

[Page and line numbers refer to Conference Base Text]

Page 1203, after line 17 insert the following:

1 SEC. 939E. SENSE OF CONGRESS.

2 It is the sense of Congress that the Commission
3 should exercise the rulemaking authority of the Commis-
4 sion under section 15E(h)(2)(B) of the Securities Ex-
5 change Act of 1934 (15 U.S.C. 78o-7(h)(2)(B)) to pre-
6 vent improper conflicts of interest arising from employees
7 of nationally recognized statistical rating organizations
8 providing services to issuers of securities that are unre-
9 lated to the issuance of credit ratings, including con-
10 sulting, advisory, and other services.



#2
REJECT

1 "(3) ancillary assistance, advice, or consulting
2 services unrelated to any specific credit rating
3 issuance; and
4 "(4) such further activities or services as the
5 Commission may determine as necessary or appro-
6 priate in the public interest or for the protection of
7 investors."

Page 1171, strike line 10 through page 1173, line
4, and insert the following:

#3
REJECT
(KEEP
SENATE
SECTION,
FROM SEN.
REED)

8 SEC. 933. STANDARDS FOR PRIVATE ACTIONS.

9 (a) IN GENERAL.—Section 21D(b)(2) of the Securi-
10 ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is
11 amended by inserting before the period at the end of the
12 following: ", and in the case of an action brought under
13 this title for money damages against a credit rating agen-
14 cy, it shall be sufficient for purposes of pleading any re-
15 quired state of mind for purposes of such action that the
16 complaint shall state with particularity facts giving rise
17 to a strong inference that the credit rating agency was
18 grossly negligent in violating the securities laws".

19 (b) PLEADING STANDARD.—Section 15E(m) of the
20 Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m))
21 amended to read as follows:

22 "(m) APPLICATION OF ENFORCEMENT PROVISIONS;
23 PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—

1 Statements made by credit rating agencies shall not be
2 deemed forward looking statements for purposes of section
3 21E. In any private right of action commenced against
4 a credit rating agency under the securities laws, the same
5 pleading standards with respect to gross negligence shall
6 apply to the credit rating agency as would apply to any
7 other person in the same private right of action against
8 such person.”.

9 (c) REQUIREMENTS FOR LIABILITY.—Section 21D of
10 the Securities Exchange Act of 1934 (15 U.S.C. 78u-4)
11 is amended—

#3
REJECT

12 (1) by redesignating subsections (c) through (f)
13 as subsections (d) through (g), respectively; and
14 (2) by inserting after subsection (b) the fol-
15 lowing:

16 “(c) REQUIREMENTS FOR LIABILITY.—A purchaser
17 of a security given a rating by a credit rating agency shall
18 have the right to recover for damages if the process of
19 determining the credit rating was—

20 “(1) grossly negligent, based on the facts and
21 circumstances at the time the rating was issued; and

22 “(2) a substantial factor in the economic loss
23 suffered by the investor.

24 No action shall be maintained to enforce any liability cre-
25 ated under this subsection unless brought within 2 years

1 after the discovery of the facts constituting the violation
2 and within 3 years after the initial issuance of the rat-
3 ing.”.

Page 1181, after line 17, insert the following new
sections (and redesignate succeeding sections and con-
form the table of contents accordingly):

#5
REJECT

22 SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DIS-
23 CLOSURE RULE.
24 Not later than 90 days after the date of enactment
25 of this subtitle, the Securities Exchange Commission shall

- #5
REJECT
- 1 revise Regulation FD (17 C.F.R. 243.100) to remove from
 - 2 such regulation the exemption for entities whose primary
 - 3 business is the issuance of credit ratings (17 C.F.R.
 - 4 243.100(b)(2)(iii)).

Page 1184, strike line 20 through page 1203, line 17, and insert the following (and conform the table of contents accordingly):

#4
REJECT

5 SEC. 939D. STUDY ON ASSIGNED CREDIT RATINGS. FRANKEN

6 (a) STUDY.—The Securities and Exchange Commis-
7 sion shall undertake a study of the—

8 (1) ratings process for structured products and
9 the associated conflicts of interest in both the issuer-
10 pay and subscriber-pay models;

11 (2) feasibility of establishing a public or private
12 utility or self-regulatory agency that assigns nation-
13 ally recognized statistical ratings organizations to
14 determine the ratings of issuers and obligors of
15 structured products including—

16 (A) an assessment of potential mechanisms
17 for determining fees for the nationally recog-
18 nized statistical ratings organizations, if so as-
19 signed;

20 (B) appropriate methods for paying fees to
21 the assigned rating agencies;

FRANKEN

1 (C) the extent to which the creation of
2 such a system would be viewed as creating
3 moral hazard on the part of the government;
4 and

5 (D) any constitutional and other issues
6 concerning the establishment of such a system;

7 (3) range of metrics by which to determine the
8 accuracy of ratings; and

9 (4) alternative means for compensating credit
10 rating agencies that would create incentives for ac-
11 curate credit ratings.

12 (b) REPORT AND RECOMMENDATION.—Not later
13 than 12 months after the date of enactment of this title,
14 the Securities and Exchange Commission shall submit to
15 Committee on Financial Services of the House of Rep-
16 resentatives and Committee on Banking, Housing and
17 Urban Development of the Senate, a report containing the
18 findings under the study required by subsection (a) and
19 any recommendations for either regulatory or statutory
20 changes that the Commission believes should be made to
21 implement the findings.

#4
REJECT

Page 1203, after line 17, insert the following new
section (and conform the table of contents accordingly):

#1
REJECT

1 SEC. 6012. EFFECT OF RULE 436(G).

2 Rule 436(g), promulgated by the Securities and Ex-

3 change Commission under the Securities Act of 1933,

4 shall have no force or effect.



**FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX**

[Page and line numbers refer to Conference Base Text]

Strike section 989D and insert the following:

1 **SEC. 939D. STUDY AND RULEMAKING ON ASSIGNED CREDIT**

2 **RATINGS.**

3 (a) **DEFINITION.**—In this section, the term “struc-
4 tured finance product” means an asset-backed security, as
5 defined in section 3(a)(77) of the Securities Exchange Act
6 of 1934, as added by section 941, a structured product
7 based on an asset-backed security, and any other security,
8 as determined by the Commission, by rule.

9 (b) **STUDY.**—The Commission shall carry out a study
10 of—

11 (1) the credit rating process for structured fi-
12 nance products and the conflicts of interest associ-
13 ated with the issuer-pay and the subscriber-pay
14 models;

15 (2) the feasibility of establishing a system in
16 which a public or private utility or a self-regulatory
17 organization assigns nationally recognized statistical

1 rating organizations to determine the credit ratings
2 of structured finance products, including—

3 (A) an assessment of potential mechanisms
4 for determining fees for the nationally recog-
5 nized statistical rating organizations;

6 (B) appropriate methods for paying fees to
7 the nationally recognized statistical rating orga-
8 nizations;

9 (C) the extent to which the creation of
10 such a system would be viewed as the creation
11 of moral hazard by the Federal Government;
12 and

13 (D) any constitutional or other issues con-
14 cerning the establishment of such a system;

15 (3) the range of metrics that could be used to
16 determine the accuracy of credit ratings; and

17 (4) alternative means for compensating nation-
18 ally recognized statistical rating organizations that
19 would create incentives for accurate credit ratings.

20 (c) REPORT AND RECOMMENDATION.—Not later
21 than 12 months after the date of enactment of this Act,
22 the Commission shall submit to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate and the
24 Committee on Financial Services of the House of Rep-
25 resentatives a report that contains—

1 (1) the findings of the study required under
2 subsection (b); and

3 (2) any recommendations for regulatory or stat-
4 utory changes that the Commission determines
5 should be made to implement the findings of the
6 study required under subsection (b).

7 (d) RULEMAKING.—

8 (1) RULEMAKING AUTHORIZED.—After submis-
9 sion of the report under subsection (c), the Commis-
10 sion may, by rule, as the Commission determines is
11 necessary or appropriate in the public interest or for
12 the protection of investors, establish a system for the
13 assignment of nationally recognized statistical rating
14 organizations to determine the credit ratings of
15 structured finance products, in a manner that pre-
16 vents the issuer, sponsor, or underwriter of the
17 structured finance product from selecting the nation-
18 ally recognized statistical rating organization that
19 will determine the credit ratings and monitor the
20 credit ratings.

21 (2) RULE OF CONSTRUCTION.—Nothing in this
22 subsection may be construed to limit or suspend any
23 other rulemaking authority of the Commission.



FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX

[Page and line numbers refer to Conference Base Text]

Page 1203, after line 17 insert the following:

1 **SEC. 939E. SENSE OF CONGRESS.**

2 It is the sense of Congress that the Commission
3 should exercise the rulemaking authority of the Commis-
4 sion under section 15E(h)(2)(B) of the Securities Ex-
5 change Act of 1934 (15 U.S.C. 78o-7(h)(2)(B)) to pre-
6 vent improper conflicts of interest arising from employees
7 of nationally recognized statistical rating organizations
8 providing services to issuers of securities that are unre-
9 lated to the issuance of credit ratings, including con-
10 sulting, advisory, and other services.



FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX

[Page and line numbers refer to Conference Base Text]

Strike section 989D and insert the following:

1 SEC. 939D. STUDY AND RULEMAKING ON ASSIGNED CREDIT
2 RATINGS.

3 (a) DEFINITION.—In this section, the term “struc-
4 tured finance product” means an asset-backed security, as
5 defined in section 3(a)(77) of the Securities Exchange Act
6 of 1934, as added by section 941, a structured product
7 based on an asset-backed security, and any other security,
8 as determined by the Commission, by rule.

9 (b) STUDY.—The Commission shall carry out a study
10 of—

11 (1) the credit rating process for structured fi-
12 nance products and the conflicts of interest associ-
13 ated with the issuer-pay and the subscriber-pay
14 models;

15 (2) the feasibility of establishing a system in
16 which a public or private utility or a self-regulatory
17 organization assigns nationally recognized statistical

1 rating organizations to determine the credit ratings
2 of structured finance products, including—

3 (A) an assessment of potential mechanisms
4 for determining fees for the nationally recog-
5 nized statistical rating organizations;

6 (B) appropriate methods for paying fees to
7 the nationally recognized statistical rating orga-
8 nizations;

9 (C) the extent to which the creation of
10 such a system would be viewed as the creation
11 of moral hazard by the Federal Government;
12 and

13 (D) any constitutional or other issues con-
14 cerning the establishment of such a system;

15 (3) the range of metrics that could be used to
16 determine the accuracy of credit ratings; and

17 (4) alternative means for compensating nation-
18 ally recognized statistical rating organizations that
19 would create incentives for accurate credit ratings.

20 (c) REPORT AND RECOMMENDATION.—Not later
21 than 12 months after the date of enactment of this Act,
22 the Commission shall submit to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate and the
24 Committee on Financial Services of the House of Rep-
25 resentatives a report that contains—

1 (1) the findings of the study required under
2 subsection (b); and

3 (2) any recommendations for regulatory or stat-
4 utory changes that the Commission determines
5 should be made to implement the findings of the
6 study required under subsection (b).

7 (d) RULEMAKING.—

8 (1) RULEMAKING AUTHORIZED.—After submis-
9 sion of the report under subsection (c), the Commis-
10 sion may, by rule, as the Commission determines is
11 necessary or appropriate in the public interest or for
12 the protection of investors, establish a system for the
13 assignment of nationally recognized statistical rating
14 organizations to determine the credit ratings of
15 structured finance products, in a manner that pre-
16 vents the issuer, sponsor, or underwriter of the
17 structured finance product from selecting the nation-
18 ally recognized statistical rating organization that
19 will determine the credit ratings and monitor the
20 credit ratings. In issuing any rule under this para-
21 graph, the Commission shall give thorough consider-
22 ation to the provisions of section 15E(w) of the Se-
23 curities Exchange Act of 1934, as that provision
24 would have been amended by section 939D of H.R.

1 4173 (111th Congress), as passed by the Senate on
2 May 20, 2010.

3 (2) RULE OF CONSTRUCTION.—Nothing in this
4 subsection may be construed to limit or suspend any
5 other rulemaking authority of the Commission.



**SENATE COUNTER-OFFER
TITLE IX – INVESTOR PROTECTION
WEDNESDAY, JUNE 16, 2010**

1. Fiduciary Duty – **Under Discussion**
2. Add the House provision requiring the SEC to study the need for enhanced examination and enforcement resources for investment advisers. (House § 7107, p. 1289) **Accept**
3. Amend the Senate provision on the Investor Advocate’s compensation so that it is comparable to other senior executive positions, rather than equal to the highest rate of pay for the Senior Executive Service (Senate § 914, p. 1061) **Counter - Change the House clarification so that the Investor Advocate’s compensation is relative to “a senior executive that reports to the Chairman.”** **Reject** – Reject lowering the Investor Advocate’s salary from the base text.
4. Amend the Senate provisions on streamlining of SRO rule filing procedures so that the SEC has the option to *disapprove* proposed rules within the applicable deadline, not just approve the rules or institute hearings on them. (Senate § 915, p. 1070 *et seq.*) **Accept in Part – Accept providing the SEC has the ability to disapprove proposed rules.** **Reject- Reject changing the starting date for the period for a hearing to “after the date of receipt of a proper filing”.**
5. Amend the Senate provision on whistleblower incentives so that –
 - a. the type of original information supporting an award must have “significantly contributed” to a successful enforcement action (Senate § 922, p. 1090) and may not be “based on” allegations in judicial proceedings or news media; **Reject**
 - b. mandatory minimum awards apply only to SEC enforcement actions, not to amounts obtained in related actions brought by other enforcement agencies (Senate § 922, p. 1091); **Reject**
 - c. the standard applicable to a whistleblower appeal of an award is review for gross abuse of discretion by the SEC (Senate § 922, p. 1095); **Counter – Allow for whistleblowers to appeal an agency’s final decision but not the reward amount.**
 - d. the confidentiality provision is more narrow, covering just information that could reasonably be expected to reveal the identity of the whistleblower, not *all* information provided to the SEC by the whistleblower (Senate § 922, p. 1102). **Accept**
6. Amend the Senate provision on production of documents by foreign auditing firms to broaden and clarify the type of work that triggers the obligation to produce work papers, and to ensure that foreign firms appoint an agent not only for service of process, but also for SEC document requests. (Senate § 929J, p. 1135-1137) **Accept**
7. Amend the Senate provisions to make clear that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Securities Act of 1933 and the Investment Company Act. (Senate § 929M, p. 1142). **Accept**

8. Add the House provision clarifying that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Securities Exchange Act of 1934. (House § 7215, p. 1332) **Accept**
9. Amend the Senate provisions to make clear that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions seeking penalties under the Investment Advisers Act. (Senate § 929N, p. 1142) **Accept**
10. Add the House provision, as drafted in the Reed amendment, authorizing the SEC to seek civil penalties in cease and desist proceedings against any person, not only registrants. (House § 7211, p. 1317; Reed § 922(b)) **Accept**
11. Add the House provision, as drafted in the Reed amendment, extending the SEC's enforcement jurisdiction to cover significant steps in furtherance of a violation, even if the securities transactions occur outside the U.S., and to cover foreign conduct that has a foreseeable substantial effect with the U.S. (House § 7216, p. 1332; Reed § 922(d)) **Accept**
12. Add the House provision, as drafted in the Reed amendment, clarifying that control person liability under the Section 20(a) of the Securities Exchange Act applies in SEC enforcement actions, not only in private actions. (House § 7220, p. 7220; Reed § 922(e)) **Accept**
13. Add the House provision, as drafted in the Reed amendment, expanding recordkeeping and examination requirements for custodians who hold property of clients of investment companies or investment advisers. (House § 7106, p. 1287; Reed 993(a)) **Accept**
14. Add the House provision, as drafted in the Reed amendment, giving the SEC authority to examine all records of investment companies. (House § 7219, p. 1338; Reed § 994(a)) **Reject**
15. Add the House provision, as drafted in the Reed amendment, clarifying that the SEC has authority under the Securities Exchange Act, the Investment Company Act, and the Investment Advisers Act to conduct surveillance and risk assessment of the securities markets. (House § 7218, p. 1336; Reed § 994(c)) **Reject**
16. Add the House provision, as drafted in the Reed amendment, giving the SEC authority to adopt rules that would require more timely reporting when a person acquires more than 5% ownership interest in an issuer. (House § 7105, p. 1285; Reed § 995(a)) **Accept**
17. Add the House provision, as drafted in the Reed amendment, enabling the SEC to clarify the types of relationships that compromise a person's independence for purposes of serving as a mutual fund director. (House § 7412, p. 1369; Reed § 995(c)) **Reject**
18. Add the House provision, as drafted in the Reed amendment, extending the fingerprinting requirement to personnel of national securities exchanges and national securities associations. (House § 7403, p. 1350; Reed 995(e)) **Accept**
19. Add the House provision that invalidates any contractual provision requiring persons to waive compliance with any self-regulatory organization rules. (House § 7404, p. 1351) **Accept**

20. Add the House provision requiring the SEC to complete investigations and examinations within certain time frames, subject to exceptions for complex cases. (House § 7209, p. 1313) **Accept**
21. Add the House provision increasing the assessments on SIPC members from \$150 annually to .02% of the member's gross revenues derived from the securities business. (House § 7501, p. 1388) **Accept**
22. Add the House provision increasing penalties for fraud under SIPA from \$50,000 to \$250,000. (House § 7507, p. 1393) **Accept**
23. Add the House provision establishing civil and criminal penalties against any person who misrepresents membership in SIPC or who falsely claims that an account is protected under SIPA. (House § 7508, p. 1393) **Accept**
24. Add the House provision enhancing notice to missing security holders. (House § 7421, p. 1381) **Accept**
25. Add the House provision requiring daily reporting on short sales, prohibiting manipulative short sales, and requiring notification to customers that they may elect not to allow their securities to be used in connection with short sales and that the broker may receive compensation if the shares are so used. (House § 7422, p. 1383) **Accept in Part – Accept all of the House's offer on short sale reforms except for Page 39 Line 20 through Page 40 Line 13 (SEC.929X. (a) "(2)(A)") of the House offer. – Reject – Reject daily short sale reporting by every institutional investment manager (SEC.929X. (a) "(2)(A)").**
26. Add the House provision requiring the SEC to hire a consultant to study the SEC's operations and the possible need for comprehensive reform of the agency. (House § 7304, p. 1344) **Accept**
27. Add the House provision requiring GAO to study issues surrounding employees who leave the SEC and become employed in the securities industry. (House § 7414, p. 1370) **Accept**
28. Strike and replace the Senate's provisions in Subtitle H establishing MSRB registration and oversight of municipal advisers. Replace them with the House provisions, which (a) establish SEC registration and oversight of municipal advisers, (b) impose a fiduciary duty on municipal advisers, and (c) establish greater independence of the MSRB. (House § 7801, § 7802, § 7803, p. 1429 *et seq.*, and § 7411, p. 1366) **Reject**
29. Strike the Senate provision deferring by 180 days the effective date of the PCAOB's right to assess fees on broker-dealers, to reflect the PCAOB's calendar fiscal year. (Senate § 982, p. 1295, 1293) **Accept**
30. Add a provision requiring agency heads, including the Chair of the SEC, to address deficiencies identified in any Inspector General report, or certify to both Houses of Congress that no action is necessary. (House § 3303) **Accept**
31. Amend the Senate provision on material loss reports by increasing the dollar thresholds that trigger the reporting obligation. (Senate § 987, p. 1311) **Reject**

32. Add the House provisions that exempt small issuers (less than \$75 million in market capitalization) from the requirements of Sarbanes-Oxley Section 404(b) (House § 7606, p. 1417), and require the following studies: **Reject**
- a. An SEC study of ways to reduce the burdens of compliance with Section 404(b) on companies with \$75 million to \$250,000 million in market capitalization (House § 7606, p. 1417);
 - b. An SEC study on the use of revenue as a test for defining smaller reporting companies (House § 7416, p. 1374); and
 - c. A GAO study on reducing the Sarbanes-Oxley compliance burdens and whether reducing those burdens would encourage listings on exchanges (House § 7415, 1372).

EXEC COMP

- 1. Add Shareholder Vote on Golden Parachutes. House and Senate agree on annual, non-binding, shareholder vote on executive compensation, but Senate does not include House shareholder vote on golden parachutes. **Reject**
- 2. Add House provision on Enhanced Compensation Oversight for Financial Industry. House requires all Federal financial regulators to issue and enforce joint compensation rules specifically applicable to all financial institutions with a Federal regulator. Senate bill requires only that Fed to consult with the FDIC & OCC to set safety and soundness standards for BHCs prohibiting excessive compensation plans. **Reject**
- 3. Add House mandate that SEC require that independence standards applied to compensation committee consultants are competitively neutral and treat large and small consultants equally. **Accept**
- 4. Add House mandate that SEC require institutional investor to disclose their voting in compensation-related voting. **Accept**

ADDITIONS

- 5. ADDITION: Amends Section 972 Proxy Access of the base text so that only shareholders that have owned not less than 5% of outstanding shares for not less than 2 years have access to the proxy.
- 6. ADDITION: Strike Section 971 of the Chairman's base text
- 7. ADDITION: Substitute for Sec. 978 of base text, a study on GASB funding, with a certain mechanism for annual funding of GASB
- 8. ADDITION: Amendments to add considerations in the Sec.919B Study on Financial Planners and the Use of Financial Designations

9. ADDITION: Add Section 929O – Restoration of Congressional Intent that Prospectus Is Not Restricted to Public Offerings.
10. ADDITION: Make Leahy changes to whistleblower provisions.

House Conference Amendments

1. PCAOB distinction of broker-dealers. **ACCEPT with conforming changes**
2. Stoneridge. **REJECT** / offer a GAO study on the costs and benefits of creating a private right of action against aiders and abettors of securities fraud (New section 929P).
3. SEC Ombudsman – **ACCEPT with changes to place this with the Investor Advocate**
4. Whistleblower Office. **ACCEPT**

As passed by
the Senate Conference
6/17/10

**** Senate Counteroffer ****
Revised 6/16

Title: Title XI

Matter: Federal Reserve and Emergency Liquidity Provisions

The Senate response to the proposed House amendments to the Base text is as follows:

1. House Offer: **Amend Senate provision** regarding Federal Reserve 13(3) lending to insert requirement from House-passed bill that the Federal Reserve Board and Secretary of Treasury have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99% confidence that funds disbursed under the facility or program and interest will be fully repaid. (Senate bill §1101, Page 1724, lines 16-19).

Senate response: REJECT.

2. House Offer: **Amend Senate Provision** regarding ongoing Federal Reserve audit requirements to add discount window and open market transactions to items to be reviewed by GAO. (Senate bill § 1102, Page 1730 line 7 – Page 1733, line 23).

Senate response: ACCEPT.

3. House Offer: **Amend Senate Provisions** requiring public disclosure of emergency credit facilities information to also require public disclosure of Federal Reserve open market operations and discount window transactions two years after the transactions have been entered into. (Senate bill § 1103, Page 1735, after line 17).

Senate response: ACCEPT, but change paragraph (s)(6), on page 7, which provides a broad FOIA exemption for covered transactions, to provide a narrower exemption that applies until the relevant mandatory release date.

4. House Offer: **Strike Senate Provision** on appointment of Federal Reserve Bank of New York President and limiting eligibility to vote for or serve as a Federal Reserve Bank director, and replace with provision removing the authority of the member banks' representatives on each regional board of directors (Class A directors) from appointing/voting for the President of the Reserve Bank (Senate bill § 1107, Page 1751, line 20 – 1752, line 6).

Senate response: ACCEPT.

5. House Offer: **Add House Provision** on no financial stability authority in the bill being delegated to Federal Reserve Bank Presidents to Senate Provision on no delegation of supervisory policymaking to reserve banks. (House bill § 1114, Page 132, line 3-14; Senate bill § 1108, Page 1754, line 17).

Senate response: ACCEPT.

6. House Offer: **Add House Provision** adding new restrictions to the Federal Reserve's foreign currency swap authority (House Bill, §1702, Page 517, line 1-15).

Senate response: REJECT.

3 “(6) CONSISTENT TREATMENT OF INFORMA-
4 TION.—Except as provided in this subsection or sec-
5 tion 13(3)(D), or in section 714(f)(3)(C) of title 31,
6 United States Code, the information described in
7 paragraph (1) and information concerning the trans-
8 actions described in section 714(f) of such title, shall
9 be confidential, including for purposes of section
10 552(b)(3) of title 5 of such Code, unless the Board
11 determines that disclosure of such information would
12 be in the public interest and would not harm the ef-
13 fectiveness of the relevant credit facility or the pur-
14 pose of conduct of the relevant transactions.

earlier

until the
relevant
mandatory
release date
described in
paragraph (2)

Revised paragraph (S)(6)

Restoring American Financial Stability Conference Amendment

Second Degree Amendment

Offered by Senator Leahy

1 At the end of the proposed Senate amendment to add
2 section 1110 to the conference base text of H.R. 4173,
3 add the following:

4 “(7) STUDY OF FOIA EXEMPTION IMPACT.—

5 “(A) STUDY.—The Inspector General of
6 the Board of Governors of the Federal Reserve
7 System shall—

8 “(i) conduct a study on the impact
9 that the exemption from section 552(b)(3)
10 of title 5 (known as the Freedom of Infor-
11 mation Act) established under paragraph
12 (5) has had on the ability of the public to
13 access information about the administra-
14 tion by the Board of Governors of emer-
15 gency credit facilities, discount window
16 lending programs, and open market oper-
17 ations; and

18 “(ii) make any recommendations on
19 whether the exemption described in clause
20 (i) should remain in effect.

1 “(B) REPORT.—Not later than 30 months
2 after the date of enactment of this section, the
3 Inspector General of the Board of Governors of
4 the Federal Reserve System shall submit a re-
5 port on the findings of the study required under
6 subparagraph (A) to the Committee on Bank-
7 ing, Housing, and Urban Affairs of the Senate
8 and the Committee on Financial Services of the
9 House of Representatives, and publish the re-
10 port on the website of the Commission.”.