

**AMENDMENT TO DISCUSSION DRAFT OF
SEPTEMBER 25, 2009
OFFERED BY MR. DONNELLY OF INDIANA**

Page 75, after line 25, insert the following new subsection:

1 (j) EXCLUSION FOR MANUFACTURED HOME RETAIL-
2 ERS AND MODULAR HOME RETAILERS.—

3 (1) IN GENERAL.—The Director and the Agen-
4 cy may not exercise any rulemaking, supervisory, en-
5 forcement or other authority, including authority to
6 order assessments, over a person to the extent such
7 person—

8 (A) acts as an agent or broker for a buyer
9 or seller of a manufactured home or a modular
10 home;

11 (B) facilitates the purchase by a consumer
12 of a manufactured home or modular home, by
13 negotiating the purchase price or terms of the
14 sales contract (other than providing financing
15 with respect to such transaction); or

16 (C) offers to engage in any activity de-
17 scribed in subparagraphs (A) or (B).

1 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
2 (1) shall not apply to any person described in such
3 paragraph to the extent such person is engaged in
4 any financial activity described in any subparagraph
5 of section 101(18) or is otherwise subject to any of
6 the enumerated consumer laws or the authorities
7 transferred under subtitle F or H.

8 (3) DEFINITIONS.—For purposes of this sub-
9 section:

10 (A) MANUFACTURED HOME.—The term
11 “manufactured home” has the meaning given
12 such term in section 603 of the National Manu-
13 factured Housing Construction and Safety
14 Standards Act of 1974 (42 U.S.C. 5402).

15 (B) MODULAR HOME.—The term “mod-
16 ular home” means a house built in a factory in
17 two or more modules that meet the State or
18 local building codes where the house will be lo-
19 cated and where such modules are transported
20 to the building site, installed on foundations,
21 and completed.



POSEY 001

**AMENDMENT TO DISCUSSION DRAFT OF
SEPTEMBER 25, 2009
OFFERED BY MR. POSEY OF FLORIDA**

Page 94, after line 19, insert the following new paragraph:

1 (4) REQUIREMENT TO INCLUDE DISCLAIMER ON
2 PUBLIC STATEMENTS.—The Director shall ensure
3 that the Agency's website, and any statement made
4 by the Director or the Agency to the public, includes
5 a disclaimer stating that the Agency does not en-
6 dorse any particular financial product or service and
7 consumers are expected to exercise due diligence in
8 deciding what financial products and services are ap-
9 propriate for them.



MANAGER’S AMENDMENT TO THE DISCUSSION
DRAFT OF SEPTEMBER 25, 2009 [H.R. 3126]
OFFERED BY MR. FRANK OF MASSACHUSETTS

Page 4, line 11, insert “, other than a Federal tax return,” after “financial product”.

Page 4, strike line 14 and all that follows through line 23 and insert the following new paragraph:

1 (8) COVERED PERSON.—

2 (A) IN GENERAL.—The term “covered per-
3 son” means any person who engages directly or
4 indirectly in a financial activity, in connection
5 with the provision of a consumer financial prod-
6 uct or service.

7 (B) EXCLUSION.—The term “covered per-
8 son” shall not include the Secretary, the De-
9 partment of the Treasury, any agency or bu-
10 reau under the jurisdiction of the Secretary, or
11 any person collecting Federal taxes for the
12 United States to the extent such person is act-
13 ing in such capacity.

Page 6, strike line 4 and all that follows through line 8.

Page 10, beginning on line 2, strike “not subject to regulation by or registered with” and insert “excluding an investment adviser that is a person regulated by”.

Page 10, line 4, strike “or” and insert a comma.

Page 10, line 5, insert “, or any securities commission (or any agency or office performing like functions) of any State” before the closing parenthesis.

Page 10, strike line 6 and all that follows through line 19 and insert the following new subparagraph:

1 (H)(i) Acting as financial adviser to any
2 person (excluding an investment adviser that is
3 a person regulated by the Commodity Futures
4 Trading Commission, the Securities and Ex-
5 change Commission, or any securities commis-
6 sion (or any agency or office performing like
7 functions) of any State), including—

8 (I) providing financial and other re-
9 lated advisory services;

10 (II) providing educational courses,
11 and instructional materials to consumers
12 on individual financial management mat-
13 ters;

14 (III) providing credit counseling or
15 tax planning services to any person (ex-

1 cluding the preparation of returns, or
2 claims for refund, of tax imposed by the
3 Internal Revenue Code or advice with re-
4 spect to positions taken therein, or services
5 regulated by the Secretary of the Treasury
6 under section 330 of title 31, United
7 States Code); or

8 (IV) providing services to assist a con-
9 sumer with debt management or debt set-
10 tlement, with modifying the terms of any
11 extension of credit, or with avoiding fore-
12 closure.

13 (ii) For purposes of this title, the following
14 shall not be considered acting as financial ad-
15 viser:

16 (I) Publishing any bona fide news-
17 paper, news magazine or business or finan-
18 cial publication of general and regular cir-
19 culation, including publishing market data,
20 news, or data analytics or investment in-
21 formation or recommendations that are not
22 tailored to the individual needs of a par-
23 ticular consumer.

24 (II) Providing advice, analyses, or re-
25 ports that do not relate to any securities

1 other than securities which are direct obli-
2 gations of or obligations guaranteed as to
3 principal or interest by the United States,
4 or securities issued or guaranteed by cor-
5 porations in which the United States has a
6 direct or indirect interest which shall have
7 been designated by the Secretary of the
8 Treasury, pursuant to section 3(a)(12) of
9 the Securities Exchange Act of 1934, as
10 exempted securities for the purposes of
11 that Act.

Page 11, line 18, strike “Issuance of stored value.”
and insert “Sale, provision or issuance of stored value,
except that, in the case of a sale, only if the seller influ-
ences the terms or conditions of the stored value provided
to the consumer.”.

Page 13, strike line 20, and all that follows through
page 14, line 13.

Page 15, line 12, strike “or introducing broker that
is” and insert “introducing broker, boards of trade, de-
rivatives clearing organizations, or multilateral clearing
organizations to the extent that such person’s actions
are”.

Page 15, line 14, strike the comma and all that follows through line 16 and insert “and any agent, employee, or contractor acting on behalf of, registered with, or providing services to such person but only to the extent the person, or the employee, agent, or contractor of such person, acts in a registered capacity.”.

Page 16, line 12, strike “or”.

Page 16, line 15, strike the comma and insert a semicolon.

Page 16, after line 15, insert the following new subparagraphs:

1 (G) any municipal securities dealer that is
2 registered with the Securities and Exchange
3 Commission;

4 (H) any self-regulatory organization that is
5 registered with the Securities and Exchange
6 Commission;

7 (I) any national securities exchange or
8 other entity that is required to be registered
9 under the Securities Exchange Act of 1934;
10 and

11 (J) the Municipal Securities Rulemaking
12 Board,

Page 17, after line 2, insert the following new paragraph:

1 (29) PERSON THAT PERFORMS INCOME TAX
2 PREPARATION ACTIVITIES FOR CONSUMERS.—The
3 term “person that performs income tax preparation
4 activities for consumers” means—

5 (A) any tax return preparer (as defined in
6 section 7701(a)(36) of the Internal Revenue
7 Code of 1986), regardless of whether com-
8 pensated, but only to the extent that the person
9 acts in such capacity;

10 (B) any person regulated by the Secretary
11 of the Treasury under section 330 of title 31,
12 United States Code, but only to the extent that
13 the person acts in such capacity; and

14 (C) any authorized IRS e-file Providers (as
15 defined for purposes of section 7216 of the In-
16 ternal Revenue Code of 1986), but only to the
17 extent that the person acts in such capacity.

Page 18, after line 9, insert the following new paragraph (and redesignate the following paragraphs accordingly):

18 (32) SERVICE PROVIDER.—

1 (A) IN GENERAL.—The term “service pro-
2 vider” means any person who provides a mate-
3 rial service to a covered person in the provision
4 of a consumer financial product or service, in-
5 cluding a person who—

6 (i) facilitates the design of, or oper-
7 ations relating to the provision of, the con-
8 sumer financial product or service;

9 (ii) has direct interaction with a con-
10 sumer (whether in person or via tele-
11 communication device or other similar
12 technology) regarding the consumer finan-
13 cial product or service; or

14 (iii) processes transactions relating to
15 the consumer financial product or service.

16 (B) EXCEPTIONS.—The term “service pro-
17 vider” shall not apply to a person solely by vir-
18 tue of such person providing or selling to a cov-
19 ered person—

20 (i) a support service of a type pro-
21 vided to businesses generally or a similar
22 ministerial service;

23 (ii) a service that does not materially
24 affect the terms or conditions of the con-
25 sumer financial product or service, its per-

1 formance or operation, or the propensity of
2 a consumer to obtain or use such product
3 or service; or
4 (iii) time or space for an advertise-
5 ment for a consumer financial product or
6 service through print, newspaper, or elec-
7 tronic media.

Page 25, beginning on line 22, strike “During the 2-year period beginning on the date of the enactment of this Act, the” and insert “The”.

Page 26, after line 3, insert the following new subparagraph:

8 (C) **HIRING VETERANS.**—In hiring employ-
9 ees of the Agency, the Director shall establish
10 appropriate targets, including timetables, to
11 hire veterans (as defined in paragraphs (1) and
12 (2) of section 2108 of title 5, United States
13 Code) as employees of the Agency. In estab-
14 lishing appropriate targets under this para-
15 graph, the Director may consider, among other
16 relevant factors, the proportion of veterans
17 hired by Federal agencies with comparable
18 functions or types of occupations and their ex-
19 periences in hiring veterans.

Page 27, strike line 1 and all that follows through line 22 and insert the following new paragraph:

1 (1) RESEARCH.—The Agency shall establish a
2 unit whose functions shall include—

3 (A) conducting research on consumer fi-
4 nancial counseling and education, including—

5 (i) on the topics of debt, credit, sav-
6 ings, financial product usage, and financial
7 planning;

8 (ii) exploring effective methods, tools,
9 and approaches; and

10 (iii) identifying ways to incorporate
11 new technology for the delivery and evalua-
12 tion of financial counseling and education
13 efforts;

14 (B) researching, analyzing, and reporting
15 on—

16 (i) current and prospective develop-
17 ments in markets for consumer financial
18 products or services, including market
19 areas of alternative consumer financial
20 products or services with high growth
21 rates;

22 (ii) consumer awareness, under-
23 standing, and use of disclosures and com-

1 munications regarding consumer financial
2 products or services;

3 (iii) consumer awareness and under-
4 standing of costs, risks, and benefits of
5 consumer financial products or services;

6 (iv) consumer behavior with respect to
7 consumer financial products or services, in-
8 cluding performance on mortgage loan;
9 and

10 (v) experiences of traditionally under-
11 served consumers, including un-banked and
12 under-banked consumers, regarding con-
13 sumer financial products or services;

14 (C) identifying priorities for consumer fi-
15 nancial education efforts, based on consumer
16 complaints, research or analysis conducted pur-
17 suant to subparagraph (A), or other informa-
18 tion; and

19 (D) testing and identifying methods of
20 educating consumers to determine which meth-
21 ods are most effective.

Page 28, line 7, insert “, or utilizing an existing
database,” after “database”.

Page 28, line 22, after the period insert: “To the ex-
tent permitted by law and the regulations prescribed by

the Federal banking agencies and other Federal agencies regarding the confidential treatment of information, the Federal banking agencies and other Federal agencies, respectively, shall share data relating to consumer complaints with the Director and the Agency.”.

Page 28, after line 22, insert the following new paragraph:

1 (4) CONSUMER FINANCIAL EDUCATION.—

2 (A) IN GENERAL.—The Agency shall es-
3 tablish a unit to be named the Office of Finan-
4 cial Literacy, whose functions shall include ac-
5 tivities designed to facilitate the education of
6 consumers on consumer financial products and
7 services, including through the dissemination of
8 materials to consumers on such topics.

9 (B) DIRECTOR.—The Office of Financial
10 Literacy shall be headed by a director.

11 (C) DUTIES.—Such unit shall—

12 (i) develop goals for programs to be
13 provided by persons that provide consumer
14 financial education and counseling, includ-
15 ing programs through which such per-
16 sons—

17 (I) provide one-on-one financial
18 counseling;

- 1 (II) help individuals understand
2 basic banking and savings tools;
- 3 (III) help individuals understand
4 their credit history and credit score;
- 5 (IV) assist individuals in efforts
6 to plan for major purchases, reduce
7 their debt, and improve their financial
8 stability; and
- 9 (V) work with individuals to de-
10 sign plans for long-term savings;
- 11 (ii) develop recommendations regard-
12 ing effective certification of persons pro-
13 viding programs, or performing the activi-
14 ties, described in clause (i), including rec-
15 ommendations regarding—
- 16 (I) certification processes and
17 standards for certification;
- 18 (II) appropriate certifying bodies;
19 and
- 20 (III) mechanisms for funding the
21 certification processes;
- 22 (iii) develop a technology tool to col-
23 lect data on financial education and coun-
24 seling outcomes; and

1 (iv) conduct research to identify effective
2 tive methods, tools, technology, and strategies
3 to educate and counsel consumers
4 about personal finance management, including
5 on the topics of debt, credit, savings,
6 financial product usage, and financial
7 planning.

8 (D) COORDINATION.—Such unit shall coordinate
9 with other units within the Agency in
10 carrying out its functions, including—

11 (i) working with the unit established
12 under paragraph (2) to—

13 (I) provide information and resources
14 to community organizations, non-profit
15 organizations, and other entities to assist
16 in helping educate consumers about consumer
17 financial products and services; and

18 (II) develop a marketing strategy
19 to promote financial education and
20 one-on-one counseling; and

21 (ii) working with the unit established
22 under paragraph (1) to conduct research
23 related to consumer financial education
24 and counseling.
25

Page 31, line 22, insert “the Secretary of the Treasury,” after “Trading Commission”.

Page 34, line 11, strike “through” and all that follows through line 12 and insert a period.

Page 36, line 14, after “transactions” insert “or use of service providers”.

Page 49, strike line 17 and all that follows through line 21.

Page 52, strike line 11 and all that follows through line 16 and insert the following new subparagraph:

1 (B) consult with the Federal banking agen-
2 cies, State bank supervisors, the Federal Trade
3 Commission, or other Federal agencies, as ap-
4 propriate, regarding the consistency of a pro-
5 posed regulation with prudential, consumer pro-
6 tection, civil rights, market, or systemic objec-
7 tives administered by such agencies or super-
8 visors.

Page 52, line 20, after “covered person” insert “, service provider,”.

Page 52, line 22, after “covered persons” insert “, class of service providers,”.

Page 54, line 9, after “person” insert “or service provider, with respect to any consumer financial product or service,”.

Page 54, line 19, after “persons” insert “or service providers”.

Page 56, line 9, after “thereof,” insert “or any service provider to such covered person or affiliate,”.

Page 56, line 20, after “condition” insert “, including a report containing data regarding consumer complaints,”.

Page 56, line 22, after “person,” insert “or a service provider, (other than returns and return information described in Section 6103 of the Internal Revenue Code of 1986)”.

Page 57, line 16, after “person” insert “or service provider”.

Page 58, line 8, after the period insert “No provision of this title shall be construed as limiting the authority of the Director to require reports from a covered person, as permitted under paragraph (1), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.”.

Page 58, after line 8, insert the following new paragraph:

1 (9) REPORTS OF TAX LAW NONCOMPLIANCE.—
2 The Director shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law non-compliance.
5

Page 58, line 11, strike “subsection (f)” and insert “subsections (f) and (h)”.

Page 59, strike line 8 and all that follows through line 23, and insert the following new paragraphs:

6 (2) COORDINATION WITH FEDERAL TRADE
7 COMMISSION.—
8 (A) NOTICE.—If the Commission is authorized to enforce any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the Commission shall serve written notice to the Director of any enforcement action at least 30 days prior to initiating such an enforcement action, except that if exigent circumstances are present, the Commission may provide notice immediately upon initiating such enforcement action.
17

1 (B) INTERVENTION BY THE DIRECTOR.—

2 Upon receiving any notice under subparagraph
3 (A) with respect to an enforcement action, the
4 Director may intervene in such enforcement ac-
5 tion and upon intervening—

6 (i) be heard on all matters arising in
7 such enforcement action; and

8 (ii) file petitions for appeal in such
9 enforcement action.

10 (C) PENDENCY OF AGENCY ACTION.—

11 Whenever a civil action has been instituted by
12 or on behalf of the Agency for any violation of
13 any Federal law described in paragraph (1), or
14 a regulation prescribed under any such Federal
15 law, the Commission may not, during the pend-
16 ency of that action instituted by or on behalf of
17 the Agency, institute a civil action under such
18 law or regulation against any defendant named
19 in the Agency complaint in such action for any
20 violation alleged in the Agency complaint.

21 (D) AGREEMENTS BETWEEN AGENCIES.—

22 (i) NEGOTIATIONS AUTHORIZED.—

23 The Director may negotiate an agreement
24 with the Commission to establish proce-
25 dures to ensure that the enforcement ac-

1 tions of the 2 agencies are appropriately
2 coordinated.

3 (ii) SCOPE OF NEGOTIATED AGREE-
4 MENT.—The terms of any agreement nego-
5 tiated pursuant to clause (i) may modify or
6 supersede the provisions of subparagraphs
7 (A), (B), and (C).

8 (3) COORDINATION WITH OTHER FEDERAL
9 AGENCY.—

10 (A) REFERRAL.—Any Federal agency
11 (other than the Federal Trade Commission)
12 that authorized to enforce a Federal law de-
13 scribed in paragraph (1) may recommend in
14 writing to the Director that the Agency initiate
15 an enforcement proceeding to the extent the
16 Agency is authorized by that Federal law or by
17 this title. The recommendation shall be accom-
18 panied by a written explanation of the concerns
19 giving rise to the recommendation.

20 (B) BACKSTOP ENFORCEMENT AUTHORITY
21 OF OTHER FEDERAL AGENCY.—If the Agency
22 does not, before the end of the 120-day period
23 beginning on the date on which the Director re-
24 ceives a recommendation under subparagraph
25 (A), initiate an enforcement proceeding, the

1 other agency referred to in subparagraph (A)
2 may initiate an enforcement proceeding as per-
3 mitted by that Federal law.

Page 60, after line 23, insert the following new sub-
section:

4 (h) PRESERVATION OF FEDERAL TRADE COMMIS-
5 SION AUTHORITY.—No provision of this title shall be con-
6 strued as modifying, limiting, or otherwise affecting the
7 authority of the Federal Trade Commission under the
8 Federal Trade Commission Act or other laws other than
9 the enumerated consumer laws.

Page 68, line 10, insert “or any securities commis-
sion (or any agency or office performing like functions)
of any State” after “Commission”.

Page 68, line 13 insert “or any securities commis-
sion (or any agency or office performing like functions)
of any State” after “Commission”.

Page 68, line 16, insert “or any securities commis-
sion (or any agency or office performing like functions)
of any State” after “Commission”.

Page 69, after line 24, insert the following new sub-
section (and redesignate subsequent subsections and any
cross reference to any such subsection accordingly):

1 (d) EXCLUSION FOR PERSONS REGULATED BY THE
2 FEDERAL HOUSING FINANCE AGENCY.—No provision of
3 this title shall be construed as altering, amending, or af-
4 fecting the authority of the Federal Housing Finance
5 Agency to adopt rules, initiate enforcement proceedings,
6 or take any other action with respect to a person regulated
7 by the Federal Housing Finance Agency. The Director
8 and Agency shall have no authority to exercise any power
9 to enforce this title with respect to a person regulated by
10 the Federal Housing Agency. For purposes of this sub-
11 section, the term “person regulated by the Federal Hous-
12 ing Finance Agency” means any Federal home loan bank,
13 and any joint office of 1 or more Federal home loan banks.

Page 71, strike line 14, and all that follows through
page 72, line 14, and insert the following new para-
graphs:

14 (1) IN GENERAL.—Except as permitted in para-
15 graph (2), the Director and the Agency may not ex-
16 ercise any rulemaking, supervisory, enforcement or
17 other authority, including authority to order assess-
18 ments, over—

19 (A) any person that is a certified public ac-
20 countant, permitted to practice as a certified
21 public accounting firm, or certified or licensed
22 for such purpose by a State, or any individual

1 who is employed by or holds an ownership inter-
2 est with respect to a person described in this
3 subparagraph when such person is performing
4 or offering to perform customary and usual ac-
5 counting activities, including the provision of
6 accounting, tax, advisory, other services that
7 are subject to the regulatory authority of a
8 state board of accountancy or a federal author-
9 ity, or other services that are incidental to such
10 customary and usual accounting activities, to
11 the extent that such incidental services are not
12 offered or provided by the person separate and
13 apart from such customary and usual account-
14 ing activities and are not offered or provided to
15 consumers who are not receiving such cus-
16 tomary and usual accounting activities;

17 (B) any person other than a person de-
18 scribed in subparagraph (A) that performs in-
19 come tax preparation activities for consumers;
20 or

21 (C) any individual who is providing legal
22 advice or services for which a license to practice
23 law is required under the law of the State in
24 which the advice or services are provided and
25 which are performed within the scope of an at-

1 torney-client relationship established by an
2 agreement, but only to the extent of such legal
3 advice or services.

4 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
5 (1) shall not apply to—

6 (A) any person described in paragraph
7 (1)(A) to the extent such person is engaged in
8 any activity which is not a customary and usual
9 accounting activity described in paragraph
10 (1)(A) or incidental thereto but which is a fi-
11 nancial activity described in any subparagraph
12 of section 101(18);

13 (B) any person described in paragraph
14 (1)(B) or (1)(C) to the extent such person is
15 engaged in any activity which is a financial ac-
16 tivity described in any subparagraph of section
17 101(18); or

18 (C) any person described in paragraph
19 (1)(A), (1)(B) or (1)(C) that is otherwise sub-
20 ject to any of the enumerated consumer laws or
21 the authorities transferred under subtitle F or
22 H.

Page 72, line 15, strike “REALTORS” and insert
“REAL ESTATE LICENSEES”.

Page 76, lines 8 and 9, after “covered persons” insert “or service providers”.

Page 77, lines 23 and 24, after “covered persons” insert “or service providers”.

Page 77, lines 24 and 25, after “covered persons” insert “or service providers”.

Page 78, line 1, after “covered persons” insert “, service providers,”.

Page 83, strike line 1 and all that follows through line 6.

Page 83, line 10, after “institutions” insert “, or service providers thereto,”.

Page 83, line 11, after “persons” insert “or service providers”.

Page 87, strike line 22 and all that follows through page 88, line 2, and insert the following new subsection:

1 (d) CONSULTATION.—In prescribing any regulation
2 under this section, the Director shall consult with the Fed-
3 eral banking agencies, State bank supervisors, the Federal
4 Trade Commission, or other Federal agencies, as appro-
5 priate, regarding the consistency of a proposed regulation
6 with prudential, consumer protection, civil rights, market,

1 or systemic objectives administered by such agencies or
2 supervisors.

Page 90, strike line 14 and all that follows through
line 18.

Page 90, line 25, after “credit unions” insert “, or
service providers,”.

Page 91, line 5 strike “of the covered person”.

Page 91, line 8, after “assurance of” strike “the”.

Page 91, line 9, strike “of the covered person”.

Page 91, line 13, strike “of the covered person”.

Page 91, line 24, after “supervisor” insert “, or for
any service provider”.

Page 92, line 4, after “standards” insert “applicable
to covered persons”.

Page 92, line 10, after “persons” insert “or service
providers”.

Page 92, strike line 12 and all that follows through
line 23, and insert the following new subsection:

3 (c) CONSULTATION.—In prescribing minimum stand-
4 ards under this section, the Director shall consult with the
5 Federal banking agencies, State bank supervisors, the

1 Federal Trade Commission, or other Federal agencies, as
2 appropriate, regarding the consistency of a proposed regu-
3 lation with prudential, consumer protection, civil rights,
4 market, or systemic objectives administered by such agen-
5 cies or supervisors.

Page 96, strike line 8 and all that follows through
line 13.

Page 97, line 10, insert “(including section 6103 of
the Internal Revenue Code of 1986)” before the semi-
colon.

Page 98, line 1, strike “and”.

Page 98, line 2, insert “and the Commissioner of In-
ternal Revenue” after “Trade Commission,”.

Page 98, line 20, insert “, except that no person
shall be held to have violated this subsection solely by vir-
tue of providing or selling time or space to a person plac-
ing an advertisement” before the semicolon.

Page 99, after line 12, insert the following new sec-
tion (and redesignate the subsequent section and conform
the table of contents accordingly):

6 SEC. 139. TREATMENT OF REMITTANCE TRANSFERS.

7 (a) DISCLOSURES REQUIRED FOR REMITTANCE
8 TRANSFERS.—

1 (1) IN GENERAL.—Each remittance transfer
2 provider shall make disclosures to consumers, as
3 specified by this section and by regulation prescribed
4 by the Director.

5 (2) SPECIFIC DISCLOSURES.—In addition to
6 any other disclosures applicable under this title, a
7 remittance transfer provider shall—

8 (A) disclose clearly and conspicuously, in
9 writing and in a form that the consumer may
10 keep, to each consumer who requests informa-
11 tion regarding the fees or exchange rate for a
12 remittance transfer, prior to the consumer mak-
13 ing any payment in connection with the trans-
14 fer—

15 (i) the total amount in United States
16 dollars that will be required to be paid by
17 the consumer in connection with the remit-
18 tance transfer;

19 (ii) the amount of currency that the
20 designated recipient of the remittance
21 transfer will receive, using the values of
22 the currency into which the funds will be
23 exchanged;

1 (iii) the fee charged by the remittance
2 transfer provider for the remittance trans-
3 fer;

4 (iv) any exchange rate to be used by
5 the remittance transfer provider for the re-
6 mittance transfer, unless the exchange rate
7 is not fixed on send;

8 (v) the amount of time for which the
9 information specified in this subparagraph
10 (A) will be in effect;

11 (vi) the expected time interval within
12 which the funds being transferred will be
13 made available to the recipient; and

14 (vii) the location where the funds
15 being transferred will be made available to
16 the recipient if the funds are to be made
17 available only at one location, or if the re-
18 mittance transfer provider permits the re-
19 cipient to choose from multiple locations
20 where the funds being transferred will be
21 made available to the recipient, the remit-
22 tance transfer provider shall make avail-
23 able to the consumer or the recipient a re-
24 source that lists such locations;

1 (B) at the time at which the consumer
2 makes payment in connection with the remit-
3 tance transfer, a receipt in writing disclosing
4 clearly and conspicuously—

5 (i) the information described in sub-
6 paragraph (A);

7 (ii) the expected time interval within
8 which the funds being transferred will be
9 made available to the recipient, which shall
10 be not more than ten days after the date
11 the consumer makes payment in connec-
12 tion with the remittance transfer unless
13 otherwise prohibited by applicable State or
14 Federal U.S. law or the law of another
15 country, or as may be specified by the con-
16 sumer so long as the consumer has the
17 choice to order that the funds be made
18 available to the recipient not more than ten
19 days after the consumer makes payment in
20 connection with the remittance transfer;

21 (iii) the location where the funds
22 being transferred will be made available to
23 the recipient if the funds are to be made
24 available only at one location, or if the re-
25 mittance transfer provider permits the re-

1 ipient to choose from multiple locations
2 where the funds being transferred will be
3 made available to the recipient, the remit-
4 tance transfer provider shall make avail-
5 able to the consumer or the recipient a re-
6 source that lists such locations;

7 (iv) the name and telephone number
8 or address of the designated recipient, if
9 provided to the remittance transfer pro-
10 vider by the consumer;

11 (v) information about the rights of the
12 consumer under this section to cancel the
13 remittance transfer, to resolve errors and
14 to receive refunds;

15 (vi) appropriate contact information
16 for the remittance transfer provider;

17 (vii) a transaction reference number
18 unique to that remittance transfer; and

19 (viii) information as to when the ex-
20 change rate will be calculated (for example,
21 when the funds are received by the recipi-
22 ent), if the customer has been notified that
23 the exchange rate is not fixed on send;

24 (C) at the time at which the consumer ini-
25 tiates the remittance transfer, offer to provide

1 in writing, prior to making any payment in con-
2 nection with the transfer, the information listed
3 in subparagraph (A); and

4 (D) in the case of an exchange rate not
5 fixed on send, the remittance provider shall also
6 disclose, at the time at which the consumer ini-
7 tiates the remittance transfer, the range, using
8 the high and low rates, for the prior 30 day pe-
9 riod, that the consumer would have received if
10 a representative amount had been exchanged by
11 the remittance transfer provider, as well as a
12 clear and conspicuous notice that the actual ex-
13 change rate may vary.

14 If the actual rate used for the transfer is known to
15 the remittance provider, either because such rate
16 was set by the remittance provider itself or because
17 the remittance provider receives confirmation of the
18 actual exchange rate used, the remittance provider
19 shall make available to consumers written or elec-
20 tronic confirmation of the actual exchange rate used
21 and the amount of currency that the recipient or the
22 remittance transfer received, using the values of the
23 currency into which the funds were exchanged. The
24 Director shall within 2 years after the date of the
25 enactment of the Consumer Financial Protection

1 Agency Act of 2009 prescribe consumer disclosures
2 for transfers with rates not fixed on send that are
3 functionally equivalent to those applicable to remit-
4 tances where the exchange rate is specified by the
5 remittance transfer provider at the time the con-
6 sumer initiates the remittance transfer. To the
7 greatest extent possible, the Director shall ensure
8 that functional equivalence will enable remittance
9 transfer providers to comply with all requirements in
10 this Act and provide consumers with information
11 sufficient to compare services providers, to time
12 their use of the product, to discover errors in trans-
13 mission and to seek remedies.

14 (3) EXEMPTION.—Notwithstanding require-
15 ments under paragraph 2(A)(ii) or 2(A)(iv) or
16 2(B)(i), no such disclosure is required—

17 (A) because of the requirements of another
18 law, including the law of another country;

19 (B) because the transfer is being routed
20 through the Directo a México offered by the
21 Federal reserve banks; or

22 (C) because of any other circumstance
23 deemed permissible by regulation of the Direc-
24 tor; If the actual rate used for the transfer is
25 known to the remittance provider, the remit-

1 tance provider shall make available to con-
2 sumers written or electronic confirmation of the
3 actual exchange rate used and the amount of
4 currency that the recipient of the remittance
5 transfer received, using the values of the cur-
6 rency into which the funds were exchanged.

7 (4) PROVISION OF TOLL-FREE NUMBER AND
8 WEB ACCESS.—

9 (A) In addition to providing the disclosures
10 required by this section to a consumer at a re-
11 mittance transfer provider location, a remit-
12 tance transfer provider shall provide a toll-free
13 telephone number or local number, and an
14 Internet website that a consumer can access for
15 which access no remittance transfer provider
16 may assess a charge, to obtain the information
17 required by paragraph (2)(A) for remittance
18 transfers offered by that remittance transfer
19 provider or information about the status of a
20 remittance transfer for which a consumer has
21 made payment.

22 (B) A remittance transfer provider that on
23 an aggregate basis originates 30,000 or fewer
24 transfers on a calendar year basis (or such
25 other amount as may be prescribed by the Di-

1 rector) is not required to offer the web access
2 prescribed in subparagraph (A), but is required
3 to provide a toll-free telephone number or local
4 number as prescribed in subparagraph (A).

5 (5) ALTERNATIVE METHODS OF DISCLOSURE.—

6 Subject to subsection (e)(3), a remittance transfer
7 provider may—

8 (A) if the transaction is conducted entirely
9 by telephone (which shall include, but not be
10 limited to, a mobile telephone) satisfy the re-
11 quirements of paragraph (2)(A) orally or, at the
12 option of the consumer, electronically through a
13 message sent to the consumer through any elec-
14 tronic means (including, but not limited to, an
15 electronic mail address or a mobile telephone)
16 as designated by the consumer;

17 (B) satisfy the requirements of paragraph
18 (2)(A) electronically if the transfer is initiated
19 by the consumer electronically through the re-
20 mittance transfer provider's website or through
21 any other electronic means; and

22 (C) satisfy the requirements of paragraph
23 (2)(B) by mailing (or transmitting electronically
24 if the transfer is initiated electronically by the
25 consumer through the remittance transfer pro-

1 vider's website or the consumer otherwise con-
2 sents in accordance with the provisions of sec-
3 tion 101 of the Electronic Signatures in Global
4 and National Commerce Act) the information
5 required under such paragraph to the consumer
6 not later than one business day after the date
7 on which the transaction is conducted, if the
8 transaction is conducted entirely by telephone
9 (or electronically) and the consumer requests a
10 written receipt.

11 (b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

12 (1) IN GENERAL.—The disclosures required
13 under subsections (a)(2)(A) and (a)(2)(B)(i) shall be
14 made in English and—

15 (A) at each remittance transfer provider
16 location, shall be made in the same languages
17 principally used by the remittance transfer pro-
18 vider, or any of its agents, to advertise, solicit,
19 or market its remittance transfers business, ei-
20 ther orally or in writing, at that location, if
21 other than English, provided that such lan-
22 guages are those for which the Director has
23 issued model disclosures as provided in sub-
24 section (g); or

1 (B) on a remittance transfer provider's
2 website, shall at a minimum be made in any
3 other language for which the Director has
4 issued model disclosures as provided in sub-
5 section (g) if the remittance transfer provider,
6 or any of its agents, advertises, solicits, or mar-
7 kets its remittance transfers business in such
8 language.

9 (2) DISPUTES CONCERNING TERMS.—If a dis-
10 closure is required by this section to be in English
11 and another language, the English version of the
12 disclosure shall govern any dispute concerning the
13 terms of the receipt. However, any discrepancies be-
14 tween the English version and any other version due
15 to the translation of the receipt from English to an-
16 other language including errors or ambiguities shall
17 be construed against the remittance transfer pro-
18 vider or its agent and the remittance transfer pro-
19 vider or its agent shall be liable for any damages
20 caused by these discrepancies.

21 (c) REMITTANCE TRANSFER CANCELLATIONS, RE-
22 FUNDS, AND ERRORS.—

23 (1) CANCELLATIONS.—

1 (A) After receiving the receipt required
2 under subsection (a)(2)(B), a consumer may
3 cancel the currency transaction—

4 (i) before leaving the premises of the
5 remittance transfer provider where the
6 consumer received the receipt, and

7 (ii) not later than 30 minutes after
8 the time the consumer initiated the remit-
9 tance transfer with the remittance transfer
10 provider.

11 (B) If a consumer cancels the transaction,
12 the remittance transfer provider shall imme-
13 diately refund to the consumer the fees paid
14 and the currency to be transferred, and issue a
15 receipt indicating that the transaction has been
16 cancelled.

17 (C) A consumer may not cancel a remit-
18 tance transfer after the remittance transfer pro-
19 vider has sent the funds to the recipient.

20 (D) A remittance transfer provider shall
21 not be required to provide a refund if providing
22 a refund would violate State or Federal law.

23 (2) REFUNDS.—

24 (A) If a remittance transfer provider re-
25 ceives written notice from the consumer within

1 ten days of the promised date of delivery of a
2 remittance transfer that no amount of the
3 funds to be remitted was made available to the
4 designated recipient in the foreign country, the
5 remittance transfer provider shall—

6 (i) refund to the consumer the total
7 amount in U.S. dollars that was paid by
8 the consumer in connection with such re-
9 mittance transfer;

10 (ii) promptly transmit the remittance
11 transfer in accordance with the terms in
12 the written receipt provided to the con-
13 sumer pursuant to subsection (a)(2)(B);

14 (iii) provide such other remedy, as de-
15 termined appropriate by rule of the Direc-
16 tor for the protection of consumers; or

17 (iv) demonstrate to the consumer that
18 the proceeds of the remittance transfer
19 were made available to the recipient of the
20 remittance provider.

21 (B) A remittance transfer provider shall
22 not be required to provide a refund if providing
23 a refund would violate State or Federal law.

24 (3) ERROR RESOLUTION.—

1 (A) IN GENERAL.—If a remittance transfer
2 provider receives written notice from the con-
3 sumer within 60 days of the promised date of
4 delivery that an error occurred with respect to
5 a remittance transfer, including that the full
6 amount of the funds to be remitted was not
7 made available to the designated recipient in
8 the foreign country, the remittance transfer
9 provider shall resolve the error pursuant to this
10 paragraph.

11 (B) REMEDIES.—Not later than 120 days
12 after the date of receipt of a notice from the
13 consumer pursuant to subparagraph (A), the
14 remittance transfer provider shall—

15 (i) as applicable to the error and as
16 designated by the consumer—

17 (I) refund to the consumer the
18 total amount in U.S. dollars that was
19 paid by the consumer in connection
20 with the remittance transfer that was
21 not properly transmitted;

22 (II) make available to the des-
23 ignated recipient, without additional
24 cost to the designated recipient or to

1 the consumer, the amount appropriate
2 to resolve the error;

3 (III) provide such other remedy,
4 as determined appropriate by regula-
5 tion of the Director for the protection
6 of consumers; or

7 (ii) demonstrate to the consumer that
8 there was no error.

9 (4) REGULATIONS.—The Director, in order to
10 protect consumers, shall establish, by regulation,
11 clear and appropriate standards for remittance
12 transfer providers with respect to error resolution,
13 cancellation and refunds.

14 (d) ENFORCEMENT AUTHORITY.—The Director shall
15 have the sole authority to enforce the provisions of this
16 section, and any regulations established pursuant to this
17 section.

18 (e) APPLICABILITY OF OTHER PROVISIONS OF
19 LAW.—

20 (1) APPLICABILITY OF TITLE 18 AND TITLE 31
21 PROVISIONS.—A remittance transfer provider that is
22 a money transmitting business as defined in section
23 5330 of title 31, United States Code, may provide
24 remittance transfers only if such provider is in com-
25 pliance with the requirements of section 5330 of title

1 31, United States Code, and section 1960 of title
2 18, United States Code, as applicable.

3 (2) RULE OF CONSTRUCTION.—Nothing in this
4 section shall be construed—

5 (A) to affect the application to any trans-
6 action, to any remittance provider, or to any
7 other person of any of the provisions of sub-
8 chapter II of chapter 53 of title 31, United
9 States Code, section 21 of the Federal Deposit
10 Insurance Act, or chapter 2 of title I of Public
11 Law 91–508, or any regulations promulgated
12 thereunder; or

13 (B) to cause any fund transfer that would
14 not otherwise be treated as such under para-
15 graph (2) to be treated as an electronic fund
16 transfer, or as otherwise subject to this title, for
17 the purposes of any of the provisions referred to
18 in subparagraph (A) or any regulation pre-
19 scribed under such subparagraph.

20 (f) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 (1) DEPOSITORY INSTITUTION.—the term “de-
23 pository institution” has the same meaning as in
24 section 3 of the Federal Deposit Insurance Act and
25 includes a credit union.

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the Consumer Financial Protection
3 Agency.

4 (3) NOT FIXED ON SEND.—The term “not fixed
5 on send” when referring to an exchange rate used
6 in a remittance transfer means an exchange rate
7 that is not set by the remittance transfer provider
8 at the time the consumer initiates the remittance
9 transfer.

10 (4) REMITTANCE TRANSFER.—The term “re-
11 mittance transfer” means the electronic (as defined
12 in section 106(2) of the Electronic Signatures in
13 Global and National Commerce Act) transfer of
14 funds at the request of a consumer located in any
15 State to a person in another country that is initiated
16 by a remittance transfer provider, whether or not
17 the consumer is an account holder of the remittance
18 transfer provider or whether or not the remittance
19 transfer is also an electronic fund transfer, as de-
20 fined in section 903.

21 (5) REMITTANCE TRANSFER PROVIDER.—The
22 term “remittance transfer provider” means any per-
23 son or depository institution, or agent thereof, that
24 originates remittance transfers on behalf of con-
25 sumers in the normal course of its business, whether

1 or not the consumer is an account holder of that
2 person or depository institution.

3 (g) MODEL DISCLOSURES.—

4 (1) PUBLICATION.—Notwithstanding any provi-
5 sions of this title, the Director shall establish and
6 publish model disclosure forms to facilitate compli-
7 ance with the disclosure requirements of this section
8 and to aid the consumer in understanding the trans-
9 action to which the subject disclosure form relates.

10 (2) LANGUAGES TO BE USED IN MODEL DIS-
11 CLOSURES.—The Director shall make these disclo-
12 sures available within one year of the effective date
13 of this Act—

14 (A) in English, and

15 (B) the ten most frequently spoken lan-
16 guages in the United States, other than
17 English, used by consumers initiating remit-
18 tance transfers, as may be determined by the
19 Director.

20 (3) USE OF AUTOMATED EQUIPMENT.—In es-
21 tablishing model forms under this subsection, the
22 Director shall consider the use by lessors of data
23 processing or similar automated equipment.

24 (4) USE OPTIONAL.—A remittance transfer pro-
25 vider may utilize a model disclosure form established

1 by the Director under this subsection for purposes
2 of compliance with this section, at the discretion of
3 the remittance transfer provider.

4 (5) EFFECT OF USE.—Any remittance transfer
5 provider that properly uses the material aspects of
6 any model disclosure form established by the Direc-
7 tor under this subsection shall be deemed to be in
8 compliance with the disclosure requirements to
9 which the form relates.

10 (h) REGULATION AND EXEMPTION AUTHORITY.—
11 Notwithstanding any other provisions of this title, the Di-
12 rector, in the sole discretion of the Director, in consulta-
13 tion with relevant Federal and State government agencies
14 may by regulation exempt from one or more requirements
15 of this section, any category of remittance transfer pro-
16 vider if the Director determines that under applicable Fed-
17 eral or State law that such category of remittance transfer
18 provider is subject to requirements substantially similar
19 to those imposed under this section or that such law gives
20 greater protection and benefit to the consumer, and that
21 there is adequate provision for enforcement.

22 (i) APPLICABILITY OF STATE LAW.—

23 (1) This section does not annul, alter, affect, or
24 exempt any person subject to the provisions of this
25 section from complying with other applicable Federal

1 law and the laws of any State relating to remittance
2 transfers and remittance transfer providers, except
3 to the extent that those laws are inconsistent with
4 the provisions of this section, and then only to the
5 extent of the inconsistency.

6 (2) Notwithstanding any other provisions of
7 this title, the Director may determine whether such
8 inconsistencies exist. A State law is not inconsistent
9 with this section if the protection such law affords
10 any consumer is greater than the protection afforded
11 by this section. If the Director determines that a
12 State requirement is inconsistent, remittance trans-
13 fer providers shall incur no liability under the law of
14 that State for a good faith failure to comply with
15 that law, notwithstanding that such determination is
16 subsequently amended, rescinded, or determined by
17 judicial or other authority to be invalid for any rea-
18 son. This section does not extend the applicability of
19 any such law to any class of persons or transactions
20 to which it would not otherwise apply.

21 (3) This section does not annul, alter, or affect
22 the laws of any State relating to the licensing or
23 registration, supervision or examination of remit-
24 tance transfer providers.

1 (4) Nothing in this section shall be construed as
2 limiting the authority of a State attorney general or
3 State regulator to bring an action or other regu-
4 latory proceeding arising solely under the law of that
5 State.

6 (j) FEDERAL CREDIT UNION ACT AMENDMENT.—
7 Paragraph (12)(A) of section 107 of the Federal Credit
8 Union Act (12 U.S.C. 1757(12)(A)) is amended by insert-
9 ing “and remittance transfers, as defined in section 139
10 of the Consumer Financial Protection Agency Act of
11 2009” after “and domestic electronic fund transfers”.

12 (k) AUTOMATED CLEARINGHOUSE SYSTEM.—

13 (1) EXPANSION OF SYSTEM.—The Board of
14 Governors of the Federal Reserve System shall work
15 with the Federal reserve banks to expand the use of
16 the automated clearinghouse system for remittance
17 transfers to foreign countries, with a focus on coun-
18 tries that receive significant remittance transfers
19 from the United States, based on—

20 (A) the volume and dollar amount of re-
21 mittance transfers to those countries;

22 (B) the significance of the volume of such
23 transfers, relative to the external financial flows
24 of the receiving country; and

25 (C) the feasibility of such an expansion.

1 (2) REPORT TO THE CONGRESS.—Before the
2 end of the 180-day period beginning on the date of
3 the enactment of this Act, and on April 30 biennially
4 thereafter, the Board of Governors of the Federal
5 Reserve System shall submit a report to the Direc-
6 tor, the Committee on Banking, Housing, and
7 Urban Affairs of the Senate, and the Committee on
8 Financial Services of the House of Representatives
9 on the status of the automated clearinghouse system
10 and its progress in complying with the requirements
11 of this section.

12 (1) REGULATORY GUIDANCE ON REMITTANCE
13 TRANSFERS.—

14 (1) PROVISION OF GUIDELINES TO INSTITU-
15 TIONS.—The Director shall provide guidelines to all
16 remittance transfer providers regarding—

17 (A) the offering of low-cost remittance
18 transfers;

19 (B) the availability of agency services to
20 remittance transfer providers;

21 (C) compliance with the provisions of this
22 Act; and

23 (D) specific options that allow remittance
24 transfer providers to take advantage of auto-
25 mated clearing systems, including the FedACH

1 International Services offered by the Board of
2 Governors of the Federal Reserve System and
3 the Federal reserve banks, to transmit remit-
4 tances at low cost.

5 (2) CONTENT OF GUIDELINES.—Guidelines pro-
6 vided to remittance transfer providers under this
7 section shall include—

8 (A) information as to the methods of pro-
9 viding remittance transfer services;

10 (B) the potential economic opportunities in
11 providing low-cost remittance transfers; and

12 (C) the potential value to depository insti-
13 tutions of broadening their financial bases to
14 include persons that use remittance transfers.

15 (3) ASSISTANCE TO FINANCIAL LITERACY COM-
16 MISSION.—The Secretary of the Treasury and each
17 agency referred to in subsection (a) shall, as part of
18 their duties as members of the Financial Literacy
19 and Education Commission, assist that Commission
20 in improving the financial literacy and education of
21 consumers who send remittances.

22 (m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS
23 TO USE OF REMITTANCE HISTORY IN CALCULATION OF
24 CREDIT SCORE.—Before the end of the 365-day period
25 beginning on the date of the enactment of this Act, the

1 Director shall submit a report to the President, the Com-
2 mittee on Banking, Housing, and Urban Affairs of the
3 Senate, and the Committee on Financial Services of the
4 House of Representatives regarding—

5 (1) the manner in which a consumer's remit-
6 tance history could be used to enhance a consumer's
7 credit score;

8 (2) the current legal and business model bar-
9 riers and impediments that impede the use of a con-
10 sumer's remittance history to enhance the con-
11 sumer's credit score; and

12 (3) recommendations on the manner in which
13 maximum transparency and disclosure to consumers
14 of exchange rates for remittance transfers subject to
15 this Act may be accomplished, whether or not such
16 exchange rates are known at the time of origination
17 or payment by the consumer for the remittance
18 transfer, including disclosure to the sender of the ac-
19 tual exchange rate used and the amount of currency
20 that the recipient of the remittance transfer re-
21 ceived, using the values of the currency into which
22 the funds were exchanged, as contained in section s
23 919(a)(2)(D) and 919(a)(3) of the Electronic Fund
24 Transfer Act (as amended by subsection (a)).

1 (n) EFFECTIVE DATE.—This section shall apply with
2 respect to remittance transfers made after the end of the
3 180-day period beginning on the date of the enactment
4 of this Act.

Page 103, strike line 15 and all that follows through
line 19 and insert the following new subsection:

5 (d) PRESERVATION OF STATE AUTHORITY.—

6 (1) STATE CLAIMS.—No provision of this sec-
7 tion shall be construed as limiting the authority of
8 a State attorney general or State regulator to bring
9 an action or other regulatory proceeding arising sole-
10 ly under the law of that State.

11 (2) STATE SECURITIES REGULATORS.—No pro-
12 vision of this title shall be construed as altering, lim-
13 iting, or affecting the authority of a State securities
14 commission (or any agency or office performing like
15 functions) under State law to adopt rules, initiate
16 enforcement proceedings, or take any other action
17 with respect to a person regulated by such commis-
18 sion or authority.

19 (3) STATE INSURANCE REGULATORS.—No pro-
20 vision of this title shall be construed as altering, lim-
21 iting, or affecting the authority of a State insurance
22 commission or State insurance regulator under State
23 law to adopt rules, initiate enforcement proceedings,

- 1 or take any other action with respect to a person
- 2 regulated by such commission or regulator.

Page 135, line 18, after “covered person” insert “or service provider”.

Page 137, line 9 , after “covered person” insert “or service provider”.

Page 140, line 23, after “person” insert “, including a service provider,”.

Page 141, line 5, strike “covered”.

Page 142, line 5, strike “covered”.

Page 144, line 6, strike “covered”.

Page 152, line 14, after “person” insert “or service provider”.

Page 167, line 13, strike “all consumer” and all that follows through line 16 and insert “the consumer financial protection functions of the Federal Trade Commission that are contained within the enumerated consumer laws are transferred to the Agency, except as provided in section 122(e).”.

Page 260, line 4, after “persons” insert “and service providers”.

Page 263, line 14, insert “, except that the Agency shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors” before the semicolon.

Page 263, line 24, after the period at the end, add the following new sentence: “Institutions will not be required to report new data required under section 188(c) before the first January 1 that occurs after the end of the 9-month period beginning on the date that regulations prescribed by the Agency are prescribed in final form.”.

Page 266, line 7, insert “and” after the semicolon.

Page 266, strike line 8 and all that follows through line 10 (and redesignate the subsequent subparagraph accordingly).

Page 276, line 3, strike “6(j)(1)” and insert “6(j)(3)”.

Page 276, line 4, strike “12 U.S.C. 2605(j)(1)” and insert “12 U.S.C. 2605(j)(3)”.

Page 277, line 17, insert “each place such term appears” after “‘Secretary’”.

Page 280, line 21, insert “paragraph (9)(A)(ii)(II) (as so redesignated by subsection (a), relating to the definition of registered loan originator) or paragraph (12)(B)(ii)(II) (as so redesignated by subsection (a), relating to the definition of State-licensed loan originators) of section 1503 of such Act or in” after “(other than in”.

Page 281, line 2, insert “subsection (a)(4) (as so redesignated by subsection (a), relating to the definition of Federal banking agencies) or in” after “(other than in”.

Page 281, line 18, strike “a of a” and insert “any”.

Page 282, line 4, insert “and” after the semicolon.

Page 282, line 7, insert a comma after “Council”.

Page 282, line 8, strike “; and” and insert a period.

Page 282 strike lines 9 and 10.

Page 284, line 2, strike “5109” and insert “1509”.

Page 288, after line 19, insert the following new section (and redesignate the subsequent section and conform the table of contents accordingly):

1 **SEC. 197. MEMBERSHIP IN FINANCIAL LITERACY AND EDU-**
2 **CATION COMMISSION.**

3 Section 513(c)(1) of the Financial Literacy and Edu-
4 cation Improvement Act (20 U.S.C. 9702(c)(1)) is amend-
5 ed—

6 (1) in subparagraph (B), by striking “and” at
7 the end;

8 (2) by redesignating subparagraph (C) as sub-
9 paragraph (D); and

10 (3) by inserting after subparagraph (B) the fol-
11 lowing new subparagraph:

12 “(C) the Director of the Consumer Finan-
13 cial Protection Agency; and”.

Page 289, line 1, strike “**J**” and insert “**II**”.

Page 289, strike line 6 and all that follows through
line 16 (and redesignate subsequent subsections and any
cross reference to any such subsection accordingly).

Page 290, strike line 11 and all that follows through
page 291, line 2, and insert the following:

14 (d) Section 18(b) of the Federal Trade Commission
15 Act (15 U.S.C. 57a(b)) is amended to read as follows:



MILLER (ME) 001
MOORE (KS)

[Mr. Donnelly of
Indiana; Mr. Foster
of Illinois; Mr.
Perlmutter of
Colorado; Mr.
Maffei of New
York; Ms. Kosmas
of Florida; Mr.
Peters of Michigan;
Mr. Green of
Texas; Mr.
Dreihaus of
Ohio; Mr. Clavel
of Missouri; Mr.
Carson of Indiana
Mr. Foster
of Illinois,
Mr. Hinzsd,
Ms. Greier

AMENDMENT TO THE DISCUSSION DRAFT OF
SEPTEMBER 25, 2009 [H.R. 3126]
OFFERED BY MR. MILLER OF NORTH CAROLINA
AND MR. MOORE OF KANSAS

Page 13, after line 2, insert the following new paragraph and redesignate subsequent paragraphs accordingly:

- 1 (21) INSURED CREDIT UNION.—The term “in-
- 2 sured credit union” has the same meaning as in sec-
- 3 tion 101 of the National Credit Union Act.

Page 37, after line 15, insert the following new clause and redesignate the subsequent clause accordingly:

- 4 “(i) LIMITATION ON CERTAIN FEES.—
- 5 The Agency shall not assess examination
- 6 fees on an institution referred to in section
- 7 123(a), or an institution whose examina-
- 8 tion responsibilities have been delegated to
- 9 an appropriate agency, pursuant to section
- 10 122(c)(9).”.

Page 54, line 7, strike “The” and insert “Except as provided under section 123, the”.

Page 54, line 8, strike “, or require reports from,”.

Page 55, after line 17, insert the following new paragraph and redesignate subsequent paragraphs accordingly:

1 (4) REPORTS.—The Director may require re-
2 ports from a covered person for purposes of ensuring
3 compliance with the requirements of this title, the
4 enumerated consumers laws, and any regulation pre-
5 scribed by the Director under this title or pursuant
6 to the authorities transferred under subtitles F and
7 H, and enforcing compliance with such require-
8 ments, and enforcing compliance with such require-
9 ments.

Page 58, after line 8, insert the following new paragraph:

10 (9) DELEGATION.—
11 (A) IN GENERAL.—The Director may dele-
12 gate the examination authorities of the Agency
13 under this title to any appropriate agency, as
14 defined in section 123, for any insured deposi-
15 tory institution or insured credit union that is
16 not subject to section 123 upon a petition by an
17 appropriate agency.

1 (B) STANDARD FOR DELEGATION.—The
2 Director shall provide such delegation if, in the
3 Director's sole discretion, the Director deter-
4 mines that—

5 (i) the delegation is consistent with
6 the public interest;

7 (ii) the appropriate agency is capable
8 of enforcing compliance with this Act, and
9 with any regulation prescribed under this
10 Act; and

11 (iii) such capability is comparable to
12 or superior to the capability of the Agency,
13 in terms of expertise, demonstrated com-
14 mitment, and overall effectiveness, in en-
15 forcing such compliance.

16 (C) EFFECT OF DELEGATION.—The in-
17 sured depository institution or insured credit
18 union shall be subject to the examination proc-
19 ess described in section 123(b).

20 (D) NO EFFECT ON ENFORCEMENT.—The
21 Director's delegation authority under this para-
22 graph shall not apply to the Director's enforce-
23 ment responsibilities under subsection (e).

Page 58, line 12, after "other than" insert "section
123 and".

Page 59, after line 23, insert the following new paragraph:

1 (4) INSTITUTIONS SUBJECT TO SPECIAL EXAM-
2 INATION AND ENFORCEMENT PROCEDURES.—This
3 subsection shall not apply to institutions subject to
4 section 123.

Page 60, after line 23, insert the following new section and renumber subsequent sections accordingly:

5 **SEC. 123. EXAMINATION AND ENFORCEMENT FOR SMALL**
6 **BANKS, THRIFTS, AND CREDIT UNIONS.**

7 (a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SEC-
8 TION.—

9 (1) INSTITUTIONS COVERED.—This section
10 shall apply to—

11 (A) any insured depository institution with
12 total assets of \$10,000,000,000 or less; or

13 (B) any insured credit union with total as-
14 sets of \$1,500,000,000 or less.

15 (2) APPROPRIATE AGENCY.—For purposes of
16 this title, the term “appropriate agency” means—

17 (A) in the case of an insured depository in-
18 stitution, the appropriate Federal banking
19 agency as such term is defined in section 3 of
20 the Federal Deposit Insurance Act;

1 (B) in the case of an insured credit union,
2 the National Credit Union Administration.

3 (b) EXAMINATIONS.—

4 (1) IN GENERAL.—The appropriate agency
5 shall on a periodic basis examine, or require reports
6 from, an institution referred to in subsection (a) for
7 purposes of ensuring compliance with the require-
8 ments of this title, the enumerated consumer laws,
9 and any regulation prescribed by the Director under
10 this title or pursuant to the authorities transferred
11 under subtitles F and H, and enforcing compliance
12 with such requirements.

13 (2) AGENCY ROLE IN EXAMINATIONS.—

14 (A) The appropriate agency shall provide
15 all reports, records, and documentation related
16 to the examination process to the Agency on a
17 timely and ongoing basis.

18 (B) The Director and Agency may, at its
19 discretion, include an examiner on any examina-
20 tion conducted under paragraph (1). The ap-
21 propriate agency shall involve such Agency ex-
22 aminer in the entire examination process, in-
23 cluding setting the scope of an examination,
24 participating in the examination, and providing

1 input on the examination report, matters re-
2 quiring attention and examination ratings.

3 (c) ENFORCEMENT.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of this title other than this subsection, the
6 appropriate agency shall have primary authority to
7 enforce violations identified at institutions referred
8 to in subsection (a) of any of the requirements of
9 this title, the enumerated consumers laws, and any
10 regulation prescribed by the Director under this title
11 or pursuant to the authorities transferred under
12 subtitles F and H.

13 (2) COORDINATION WITH APPROPRIATE AGEN-
14 CY.—

15 (A) REFERRAL.—

16 (i) IN GENERAL.—The Agency may
17 recommend in writing to the appropriate
18 agency that the appropriate agency initiate
19 an enforcement proceeding to the extent
20 the appropriate agency is authorized by
21 that Federal law or by this title.

22 (ii) EXPLANATION.—Any rec-
23 ommendation under clause (i) shall be ac-
24 companied by a written explanation of the

1 concerns giving rise to the recommenda-
2 tion.

3 (B) BACKSTOP ENFORCEMENT AUTHORITY
4 OF AGENCY.—If the appropriate agency does
5 not, before the end of the 120-day period begin-
6 ning on the date on which the appropriate
7 agency receives a recommendation under sub-
8 paragraph (A), initiate an enforcement pro-
9 ceeding, the Agency may initiate an enforce-
10 ment proceeding as permitted by Federal law.

11 (d) ACTIONS ARISING OUT OF CONSUMER COM-
12 PLAIN SYSTEM.—Notwithstanding any provision of this
13 section, if through the consumer complaint system admin-
14 istered by the Agency under section 115 (c) (3), the Direc-
15 tor has reasonable cause to believe that an institution re-
16 ferred to in subsection (a) demonstrates noncompliance
17 with any provision of this title, the enumerated consumer
18 laws, or any regulation prescribed by the Director under
19 this title or pursuant to the authorities transferred under
20 subtitles F and H, the Director may directly investigate
21 such institution for such noncompliance and take any ac-
22 tion permitted under subtitle E that the Director deems
23 appropriate.

24 (e) REMOVAL OF APPROPRIATE AGENCY FOR PAR-
25 TICULAR INSTITUTION.—

1 (1) HEIGHTENED SUPERVISION.—The Direc-
2 tor—

3 (A) may provide notice to an appropriate
4 agency that the Director is considering issuing
5 a removal order under paragraph (2); and

6 (B) shall have an Agency examiner partici-
7 pate in the examination process under sub-
8 section (b) for at least 1 examination cycle.

9 (2) REMOVAL BY ORDER.—If, after the comple-
10 tion of at least 1 examination cycle following the
11 provision of notice to an appropriate agency under
12 paragraph (1), the Director determines in writing
13 that the appropriate agency has failed to adequately
14 conduct consumer compliance examinations or bring
15 appropriate enforcement actions against an institu-
16 tion referred to in subsection (a), the Director may
17 order the removal of the appropriate agency from its
18 responsibilities under this section for such institu-
19 tion.

20 (3) AGENCY AUTHORITY UPON REMOVAL.—
21 Upon removal pursuant to paragraph (2), the Agen-
22 cy shall examine and enforce against such institution
23 as if the institution were subject to section 122.

24 (4) EFFECTIVE DATE.—An order under para-
25 graph (2) shall take effect 30 days after a deter-

1 mination by the Secretary of the Treasury pursuant
2 to paragraphs (5) and (6).

3 (5) AUTOMATIC APPEAL.—An order issued by
4 the Director pursuant to paragraph (2) shall be
5 automatically appealed to the Secretary.

6 (6) DECISION BY THE SECRETARY OF THE
7 TREASURY.—

8 (A) DETERMINATION.—The order issued
9 pursuant to paragraph (1) shall be deemed af-
10 firmed unless the Secretary of the Treasury de-
11 nies the determination of the Director within
12 120 days of the issuance of the order pursuant
13 to paragraph (2).

14 (B) RULE OF CONSTRUCTION.—Nothing in
15 subparagraph (A) shall be construed as prohib-
16 iting the Secretary of the Treasury from mak-
17 ing a determination to either affirm or deny an
18 order issued pursuant to paragraph (2) prior to
19 the passage of the time period in subparagraph
20 (A).

21 (7) REGULATIONS.—By the transfer date, the
22 Secretary shall issue regulations that establish the
23 standards the Director shall apply in making a de-
24 termination to remove an appropriate agency and
25 the process, procedures, and standards for an ap-

1 peal. Such standards shall require the Director to
2 consider at least the following in issuing an order re-
3 moving an appropriate agency for an institution re-
4 ferred to in subsection (a)(1):

5 (A) Reports of examination of such institu-
6 tion.

7 (B) Any enforcement actions taken by an
8 appropriate agency against such institution and
9 the results of those actions.

10 (C) Consumer complaints issued against
11 such institution.

12 (D) Actions taken by State attorneys gen-
13 eral and private rights of action against such
14 institution.

15 (f) POLICIES AND PROCEDURES.—Within 180 days
16 after the designated transfer date, the Agency and the ap-
17 propriate agency shall develop policies and procedures for
18 implementing this section.

19 (g) ASSESSMENTS.—

20 (1) LIMITATION ON CERTAIN FEES.—The Agen-
21 cy shall not assess examination fees on an institution
22 referred to in subsection (a).

23 (2) RULE OF CONSTRUCTION.—No provision of
24 this section shall be construed as preventing the ap-
25 propriate agency from assessing fees on an institu-

1 tion referred to in paragraph (1) to meet the appro-
2 priate agency's expenses for carrying out such exam-
3 ination and supervision responsibilities pursuant to
4 this section 123.



BACA 068

**AMENDMENT TO DISCUSSION DRAFT OF
SEPTEMBER 25, 2009
OFFERED BY MR. BACA OF CALIFORNIA**

Page 34, line 9, strike "laws; and" and insert
"laws;".

Page 34, line 12, strike "Opportunity." and insert
"Opportunity; and".

Page 34, beginning line 13, insert the following:

- 1 (7) an appraisal of the regulatory and legal dif-
- 2 ficulties encountered by the Agency in carrying out
- 3 the mission and duties of the Agency with respect to
- 4 consumer protection, including a description of—
- 5 (A) the difficulties and hardships encoun-
- 6 tered with respect to coordinating with other
- 7 Federal and State government entities;
- 8 (B) the regulatory and enforcement limita-
- 9 tions placed on the Agency by this Act;
- 10 (C) the practices of persons, covered and
- 11 uncovered under this Act, that allow such per-
- 12 sons to harm consumers and escape regulation
- 13 or enforcement, including any trends identified;
- 14 and

1 (D) legislative and administrative rec-
2 ommendations with respect to solving or alle-
3 viating identified difficulties.

