

35. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MINNICK, WALT OF IDAHO OR HIS DESIGNEE, DEBATABLE FOR
20 MINUTES

Revision
to
Amendment #
88

AMENDMENT TO H.R. 4173

OFFERED BY MR. MINNICK OF IDAHO

Strike title IV and insert the following:

1 **TITLE IV—CONSUMER**
2 **FINANCIAL PROTECTION ACT**

3 **SECTION 4001. SHORT TITLE.**

4 This title may be cited as the “Consumer Financial
5 Protection Act of 2009”.

6 **SEC. 4002. CONSUMER FINANCIAL PROTECTION COUNCIL.**

7 (a) **ESTABLISHMENT.**—There is hereby established
8 the Consumer Financial Protection Council (hereinafter in
9 this title referred to as the “Council”) as an independent
10 establishment of the executive branch, which shall consist
11 of—

12 (1) the Chairman of the Board of Governors of
13 the Federal Reserve System;

14 (2) the Comptroller of the Currency;

15 (3) the Chairperson of the Board of Directors
16 of the Federal Deposit Insurance Corporation;

17 (4) the Director of the Office of Thrift Super-
18 vision;

19 (5) the Administrator of the National Credit
20 Union Administration;

1 equivalent products are subject to equivalent consumer
2 protection standards.

3 (c) CHAIRMANSHIP.—

4 (1) INITIAL CHAIRMAN.—The Chairman of the
5 Federal Trade Commission shall serve as the Chair-
6 man of the CFPS for the 2-year period beginning on
7 the date of the enactment of this title.

8 (2) SUBSEQUENT SELECTION.—After the 2-
9 year period described under paragraph (1), the
10 President shall appoint the Chairman of the CFPS
11 from among the members of the CFPS. The term of
12 the Chairmanship shall be 2 years.

13 (d) VOTING.—Decisions of the CFPS shall be made
14 by a majority vote of the members of the CFPS.

15 (e) DUTIES.—The CFPS shall review existing con-
16 sumer protection regulations and issue new or revised reg-
17 ulations where needed to prevent unfair or deceptive prac-
18 tices.

19 (f) PROCEDURES FOR PROPOSING AND ISSUING REG-
20 ULATIONS.—

21 (1) PROPOSAL.—Any member of the CFPS
22 may propose that the CFPS consider the need for
23 the modification of an existing regulation or for the
24 issuing of a new regulation with respect to a par-
25 ticular consumer financial product or service. After

1 such proposal is made, the CFPS shall develop an
2 analysis of the proposal and prepare a report that
3 either—

4 (A) recommends that no action be taken;

5 or

6 (B) recommends the modification of exist-
7 ing regulations or the issuing of new regula-
8 tions.

9 (2) PUBLICATION.—With respect to a report
10 prepared under paragraph (1)—

11 (A) if the CFPS recommends that no ac-
12 tion be taken, the CFPS shall make a copy of
13 the report publicly available; and

14 (B) if the CFPS recommends the modifica-
15 tion of existing regulations or the issuing of
16 new regulations, the CFPS shall publish such
17 report in the Federal Register and solicit public
18 comments on such recommendation, pursuant
19 to the Administrative Procedure Act.

20 (3) MODIFICATION OR ACCEPTANCE.—With re-
21 spect to each recommendation described under para-
22 graph (2)(B) for the modification of existing regula-
23 tions or the issuing of new regulations, after the
24 CFPS has considered the public comments on such
25 recommendation, the CFPS shall vote on whether

1 such recommendations should be withdrawn, modi-
2 fied, or published as a final regulation.

3 (4) REGULATIONS ISSUED BY CFPS CONTROL.—

4 Notwithstanding any other provision of law, to the
5 extent that any other regulation conflicts with a reg-
6 ulation issued by the CFPS under this subsection,
7 such other regulation shall have no force or effect to
8 the extent of such conflict.

9 (5) PROPOSALS BY STATE ADVISORY COM-
10 MITTEE.—

11 (A) IN GENERAL.—Any proposal made
12 under paragraph (1) by the member of the
13 CFPS selected by the State Advisory Com-
14 mittee shall be accompanied by a certification
15 from such member stating that more than half
16 of the States support such proposal.

17 (B) METHOD OF DETERMINATION.—For
18 purposes of this paragraph, the State Advisory
19 Committee shall determine the method for de-
20 termining if a State supports a proposal.

21 (6) REPORT ON APPROVAL OR OPPOSITION.—

22 Each member of the CFPS shall issue an annual re-
23 port to the Congress containing a detailed expla-
24 nation, for each proposal made under paragraph (1),

1 why such member supported or opposed such pro-
2 posal.

3 (7) PROCEDURES TO BE APPLIED TO ALL
4 RULEMAKINGS.—The procedures under this sub-
5 section shall be used by the CFPS when issuing any
6 regulation under the authority of this title.

7 (g) CONSUMER FINANCIAL PRODUCTS OR SERVICES
8 EXPRESSLY PERMITTED BY STATE OR FEDERAL LAW.—

9 (1) VOTING REQUIREMENTS.—Any votes taken
10 by the CFPS to prevent the offering of any con-
11 sumer financial product or service that is expressly
12 permitted by State or Federal law shall only be
13 agreed to by a two-thirds vote.

14 (2) RECOMMENDATIONS TO THE CONGRESS.—If
15 the CFPS determines a need to prevent the offering
16 of any consumer financial product or service ex-
17 pressly permitted by State or Federal law, the CFPS
18 shall issue a report to the Congress containing such
19 determination and including—

20 (A) a description of the specific financial
21 product or service that the CFPS is recom-
22 mending the Congress should prevent from
23 being offered;

1 (B) an estimate of the amount of credit
2 provided by and the number of consumers using
3 any such financial product or service;

4 (C) a list of any States which have ex-
5 pressly permitted any such financial product or
6 service;

7 (D) the identities of persons known by the
8 CFPS to be offering any such financial product
9 or service;

10 (E) an analysis of whether there are ample
11 other alternative reasonably priced financial
12 products or services available to meet con-
13 sumers' credit needs, and a description of such
14 alternative financial products or services; and

15 (F) the basis and reasoning on which the
16 CFPS has based its recommendation.

17 (3) DEFINITION.—For purposes of this sub-
18 section, the term “prevent the offering of any con-
19 sumer financial product or service” shall mean tak-
20 ing any action that could reasonably result in the di-
21 rect or indirect prohibition of, or materially interfere
22 with the ability of any person to offer, any consumer
23 financial product or service.

1 **SEC. 4004. FINANCIAL INSTITUTIONS EXAMINATION COUN-**
2 **CIL.**

3 Section 1004(a) of the Federal Financial Institutions
4 Examination Council Act of 1978 (12 U.S.C. 3303(a)) is
5 amended by inserting after "established" the following:
6 "as a subcommittee within the Consumer Financial Pro-
7 tection Council".

8 **SEC. 4005. STATE ADVISORY COMMITTEE.**

9 There is hereby established within the Council the
10 State Advisory Committee, which shall consist of one rep-
11 resentative from each of the following:

12 (1) The Conference of State Bank Supervisors.

13 (2) The American Council of State Savings Su-
14 pervisors.

15 (3) The National Association of State Credit
16 Union Supervisors.

17 **SEC. 4006. EQUALITY OF CONSUMER PROTECTION EN-**
18 **FORCEMENT RESPONSIBILITIES.**

19 With respect to each consumer protection agency, the
20 enforcement of the provisions of the consumer protection
21 laws under such agency's jurisdiction shall be of equal im-
22 portance to such agency as the enforcement of the provi-
23 sions of other laws under such agency's jurisdiction.

1 **SEC. 4007. DIRECTOR OF THE CONSUMER FINANCIAL PRO-**
2 **TECTION DIVISION.**

3 (a) **ESTABLISHMENT.**—There is hereby established
4 within each consumer protection agency a position of Di-
5 rector of the Consumer Financial Protection Division.

6 (b) **COMPENSATION.**—With respect to a consumer
7 protection agency, the Director of the Consumer Financial
8 Protection Division shall be compensated in an amount no
9 less than the amount of compensation provided to the head
10 of other subdivisions of such agency of a comparable size.

11 (c) **DIRECT REPORTING.**—Each Director of the Con-
12 sumer Financial Protection Division established under
13 subsection (a) shall report directly to the head of the agen-
14 cy within which such Director is located.

15 (d) **ANNUAL REPORT TO THE CONGRESS.**—Each
16 consumer protection agency shall issue an annual report
17 to the Congress detailing the activities of the Director of
18 the Consumer Financial Protection Division and how such
19 activities advanced the agency's consumer protection func-
20 tions.

21 **SEC. 4008. PROHIBITING UNFAIR OR DECEPTIVE ACTS OR**
22 **PRACTICES.**

23 (a) **IN GENERAL.**—Each consumer protection agency
24 may prevent a person from committing or engaging in an
25 unfair or deceptive act or practice in connection with any

1 transaction with a consumer for a consumer financial
2 product or service under such agency's jurisdiction.

3 (b) RULEMAKING.—Each consumer protection agen-
4 cy may prescribe regulations identifying as unlawful, un-
5 fair, or deceptive acts or practices in connection with any
6 transaction with a consumer for a consumer financial
7 product or service under such agency's jurisdiction.

8 (c) REFERRAL TO CFPS.—With respect to each reg-
9 ulation issued pursuant to subsection (b), the consumer
10 protection agency issuing such regulation shall propose
11 such regulation to the CFPS under section 4003(f), unless
12 the CFPS already has a substantially similar proposal
13 under consideration.

14 (d) UNFAIRNESS.—

15 (1) IN GENERAL.—A consumer protection agen-
16 cy shall have no authority under this section to de-
17 clare an act or practice in connection with a trans-
18 action with a consumer for a consumer financial
19 product or service to be unlawful on the grounds
20 that such act or practice is unfair unless such agen-
21 cy has a reasonable basis to conclude that the act
22 or practice causes or is likely to cause substantial in-
23 jury to consumers which is not reasonably avoidable
24 by consumers and such substantial injury is not out-

1 weighed by countervailing benefits to consumers or
2 to competition.

3 (2) EXISTING PUBLISHED GUIDELINES AS FAC-
4 TOR.—In determining whether an act or practice is
5 unfair, a consumer protection agency shall consider
6 established public policies and regulations, interpre-
7 tations, guidance, and staff commentaries issued by
8 the consumer protection agencies under the con-
9 sumer protection laws they enforce.

10 (e) DEFINITIONS.—For purposes of this section, the
11 terms “unfair” and “deceptive” shall have the meanings
12 given such terms under the Federal Trade Commission
13 Act (15 U.S.C. 41 et seq.).

14 **SEC. 4009. ADOPTING OPERATIONAL STANDARDS TO**
15 **DETER UNFAIR OR DECEPTIVE PRACTICES.**

16 (a) AUTHORITY TO PRESCRIBE STANDARDS.—The
17 consumer protection agencies shall prescribe standards ap-
18 plicable to covered persons to deter and detect unfair or
19 deceptive acts or practices in the provision of consumer
20 financial products or services under such agency’s jurisdic-
21 tion, including standards for—

22 (1) background checks for principals, officers,
23 directors, or key personnel of the covered person;

24 (2) registration, licensing, or certification;

1 (3) bond or other appropriate financial require-
2 ments to provide reasonable assurance of the ability
3 of the covered person to perform its obligations to
4 consumers;

5 (4) creating and maintaining records of trans-
6 actions or accounts; and

7 (5) procedures and operations of the covered
8 person relating to the provision of, or maintenance
9 of accounts for, consumer financial products or serv-
10 ices.

11 **(b) CFPS AUTHORITY TO ISSUE REGULATIONS.—**

12 The CFPS may issue regulations establishing minimum
13 standards under this section for any class of covered per-
14 sons.

15 **(c) EXCEPTION FOR ENFORCEMENT OF GRAMM-**
16 **LEACH-BLILEY PRIVACY LAWS AGAINST INSURERS.—**

17 Neither the consumer protection agencies nor the CFPS
18 shall have authority to issue or enforce regulations with
19 respect to authorities that are granted to State insurance
20 regulators under section 505(a)(6) of the Gramm-Leach-
21 Bliley Act.

22 **SEC. 4010. PRESUMPTION OF ABILITY TO REPAY.**

23 **(a) PROHIBITION ON RESIDENTIAL MORTGAGE**
24 **LOANS THAT WON'T REASONABLY BE REPAYED.—**

1 (1) **IN GENERAL.**—No creditor shall make a
2 residential mortgage loan unless it has a reasonable
3 basis for determining that the consumer can repay
4 the loan.

5 (2) **BASIS FOR DETERMINATION.**—A determina-
6 tion under this subsection of a consumer's ability to
7 repay a residential mortgage loan shall include con-
8 sideration of the consumer's credit history, current
9 income, expected income the consumer is reasonably
10 assured of receiving, current obligations, debt-to-in-
11 come ratio, employment status, and other financial
12 resources other than the consumer's equity in the
13 dwelling or real property that secures repayment of
14 the loan.

15 (b) **EXEMPTION FOR CERTAIN MODEL TERMS AND**
16 **CONDITIONS.**—Subsection (a) shall not apply to residen-
17 tial mortgage loans containing the model terms and condi-
18 tions contained in regulations issued by the Council under
19 subsection (c).

20 (c) **PROCEDURE FOR ADOPTING MODEL TERMS AND**
21 **CONDITIONS.**—

22 (1) **IN GENERAL.**—Not later than 1 years after
23 the date of the enactment of this title, the Council
24 shall issue regulations containing model terms and

1 conditions for residential mortgage loans, for pur-
2 poses of subsection (b).

3 (2) VOTING.—The Council may only issue a
4 regulation under paragraph (1)—

5 (A) by a majority vote of the Council's
6 members; and

7 (B) in a vote where each member of the
8 Council casts a vote.

9 (3) REVISION OF MODEL TERMS AND CONDI-
10 TIONS.—The Council shall update regulations issued
11 under this subsection from time to time as appro-
12 priate.

13 (4) RULEMAKING PROCEDURES.—In issuing
14 any regulation under this subsection, the Council
15 shall, to the extent practicable, follow the procedures
16 set forth under section 4003(f) for the consideration
17 of proposals by the CFPS.

18 (d) ENFORCEMENT.—The prohibition under sub-
19 section (a) shall be enforced by each member of the Coun-
20 cil with jurisdiction over the provision of residential mort-
21 gage loans.

1 **SEC. 4011. EXAMINATIONS BY CONSUMER PROTECTION**
2 **AGENCIES.**

3 (a) **IN GENERAL.**—Each consumer protection agency
4 shall carry out regular examinations of covered persons
5 regulated by such agency.

6 (b) **SCOPE OF EXAMINATIONS.**—Examinations car-
7 ried out pursuant to subsection (a) shall be comparable
8 to those examinations carried out by the Federal banking
9 agencies of insured depository institutions.

10 **SEC. 4012. CONSUMER RIGHTS TO ACCESS INFORMATION.**

11 (a) **IN GENERAL.**—Subject to regulations prescribed
12 by the consumer protection agencies, a covered person
13 shall make available to a consumer, in an electronic form
14 usable by the consumer, information in the control or pos-
15 session of the covered person concerning the consumer fi-
16 nancial product or service that the consumer obtained
17 from such covered person including information relating
18 to any transaction, series of transactions, or to the ac-
19 count, including charges and usage data.

20 (b) **EXCEPTIONS.**—A covered person shall not be re-
21 quired by this section to make available to the consumer—

22 (1) any confidential commercial information, in-
23 cluding an algorithm used to derive credit scores or
24 other risk scores or predictors;

25 (2) any information collected by the covered
26 person for the purpose of preventing fraud or money

1 laundering, or detecting, or making any report re-
2 garding other unlawful or potentially unlawful con-
3 duct;

4 (3) any information required to be kept con-
5 fidential by any other law; or

6 (4) any information that the covered person
7 cannot retrieve in the ordinary course of its business
8 with respect to that information.

9 (e) **NO DUTY TO MAINTAIN RECORDS.**—No provision
10 of this section shall be construed as imposing any duty
11 on a covered person to maintain or keep any information
12 about a consumer.

13 (d) **STANDARDIZED FORMATS FOR DATA.**—The con-
14 sumer protection agencies, by regulation, shall prescribe
15 standards applicable to covered persons to promote the de-
16 velopment and use of standardized formats for informa-
17 tion, including through the use of machine readable files,
18 to be made available to consumers under this section.

19 **SEC. 4013. PROHIBITED ACTS.**

20 It shall be unlawful for any person to—

21 (1) advertise, market, offer, sell, enforce, or at-
22 tempt to enforce, any term, agreement, change in
23 terms, fee or charge in connection with a consumer
24 financial product or service that is not in conformity
25 with this title and applicable regulation prescribed or

1 order issued by the consumer protection agencies,
2 the CFPS, or the Council;

3 (2) fail or refuse to permit access to or copying
4 of records, or fail or refuse to establish or maintain
5 records, or fail or refuse to make reports or provide
6 information to a consumer protection agency, the
7 CFPS, or the Council, as required by this title, a
8 consumer protection law or any regulation pre-
9 scribed or order issued by a consumer protection
10 agency, the CFPS, or the Council under this title or
11 pursuant to any such authority; or

12 (3) knowingly or recklessly provide substantial
13 assistance to another person in violation of the pro-
14 visions of section 4008, or any regulation prescribed
15 or order issued under such section, and any such
16 person shall be deemed to be in violation of that sec-
17 tion to the same extent as the person to whom such
18 assistance is provided.

19 **SEC. 4014. STATE ATTORNEYS GENERAL RIGHT TO SUE.**

20 No provision of this title shall be construed to limit
21 the applicability or the effect of the decision of the Su-
22 preme Court in *Cuomo v. Clearing House Assn., L.L.C.*,
23 557 U.S. _____ (2009).

1 SEC. 4015. ENFORCEMENT.

2 (a) DEFINITIONS.—For purposes of this section, the
3 following definitions shall apply:

4 (1) CIVIL INVESTIGATIVE DEMAND AND DE-
5 MAND.—The terms “civil investigative demand” and
6 “demand” mean any demand issued by a consumer
7 protection agency.

8 (2) CONSUMER PROTECTION AGENCY.—The
9 term “consumer protection agency” means—

10 (A) the appropriate Federal banking agen-
11 cy (as such term is defined in section 3(q) of
12 the Federal Deposit Insurance Act), with re-
13 spect to entities regulated by the appropriate
14 Federal banking agencies;

15 (B) the National Credit Union Administra-
16 tion, with respect to a credit union;

17 (C) the Securities and Exchange Commis-
18 sion, with respect to an entity regulated by such
19 Commission;

20 (D) the Commodity Futures Trading Com-
21 mission, with respect to an entity regulated by
22 such Commission; and

23 (E) the Federal Trade Commission, with
24 respect to any entity not regulated by the ap-
25 propriate Federal banking agencies, the Na-
26 tional Credit Union Administration, the Securi-

1 ties and Exchange Commission, or the Com-
2 modity Futures Trading Commission.

3 (3) CONSUMER PROTECTION AGENCY INVE-
4 STIGATION.—The term “consumer protection agency
5 investigation” means any inquiry conducted by a
6 consumer protection agency investigator for the pur-
7 pose of ascertaining whether any person is or has
8 been engaged in any conduct that violates this title,
9 any consumer protection law, or any regulation pre-
10 scribed or order issued by the consumer protection
11 agencies, the CFPS, or the Council under this title.

12 (4) CONSUMER PROTECTION AGENCY INVESTI-
13 GATOR.—The term “consumer protection agency in-
14 vestigator” means any attorney or investigator em-
15 ployed by a consumer protection agency who is
16 charged with the duty of enforcing or carrying into
17 effect any provisions of this title, any consumer pro-
18 tection law, or any regulation prescribed or order
19 issued under this title or pursuant to any such au-
20 thority by the consumer protection agency, the
21 CFPS, or the Council.

22 (5) CUSTODIAN.—The term “custodian” means
23 the custodian or any deputy custodian designated by
24 a consumer protection agency.

1 (6) DOCUMENTARY MATERIAL.—The term
2 “documentary material” includes the original or any
3 copy of any book, record, report, memorandum,
4 paper, communication, tabulation, chart, or other
5 document.

6 (7) VIOLATION.—The term “violation” means
7 any act or omission that, if proved, would constitute
8 a violation of any provision of this title, any con-
9 sumer protection law, or of any regulation prescribed
10 or order issued by a consumer protection agency, the
11 CFPS, of the Council under this title or pursuant to
12 any such authority.

13 (b) INVESTIGATIONS AND ADMINISTRATIVE DIS-
14 COVERY.—

15 (1) SUBPOENAS.—

16 (A) IN GENERAL.—A consumer protection
17 agency or a consumer protection agency investi-
18 gator may issue subpoenas for the attendance
19 and testimony of witnesses and the production
20 of relevant papers, books, documents, or other
21 material in connection with hearings under this
22 title.

23 (B) FAILURE TO OBEY.—In case of contu-
24 macy or refusal to obey a subpoena issued pur-
25 suant to this paragraph and served upon any

1 person, the district court of the United States
2 for any district in which such person is found,
3 resides, or transacts business, upon application
4 by a consumer protection agency or a consumer
5 protection agency investigator and after notice
6 to such person, shall have jurisdiction to issue
7 an order requiring such person to appear and
8 give testimony or to appear and produce docu-
9 ments or other material, or both.

10 (C) CONTEMPT.—Any failure to obey an
11 order of the court under this subsection may be
12 punished by the court as a contempt thereof.

13 (2) DEMANDS.—

14 (A) IN GENERAL.—Whenever a consumer
15 protection agency has reason to believe that any
16 person may be in possession, custody, or control
17 of any documentary material or tangible things,
18 or may have any information, relevant to a vio-
19 lation, a consumer protection agency may, be-
20 fore the institution of any proceedings under
21 this title or under any consumer protection law,
22 issue in writing, and cause to be served upon
23 such person, a civil investigative demand requir-
24 ing such person to—

1 (i) produce such documentary mate-
2 rial for inspection and copying or repro-
3 duction;

4 (ii) submit such tangible things;

5 (iii) file written reports or answers to
6 questions;

7 (iv) give oral testimony concerning
8 documentary material or other informa-
9 tion; or

10 (v) furnish any combination of such
11 material, answers, or testimony.

12 (B) REQUIREMENTS.—Each civil investiga-
13 tive demand shall state the nature of the con-
14 duct constituting the alleged violation which is
15 under investigation and the provision of law ap-
16 plicable to such violation.

17 (C) PRODUCTION OF DOCUMENTS.—Each
18 civil investigative demand for the production of
19 documentary material shall—

20 (i) describe each class of documentary
21 material to be produced under the demand
22 with such definiteness and certainty as to
23 permit such material to be fairly identified;

24 (ii) prescribe a return date or dates
25 which will provide a reasonable period of

1 time within which the material so de-
2 manded may be assembled and made avail-
3 able for inspection and copying or repro-
4 duction; and

5 (iii) identify the custodian to whom
6 such material shall be made available.

7 (D) PRODUCTION OF THINGS.—Each civil
8 investigative demand for the submission of tan-
9 gible things shall—

10 (i) describe each class of tangible
11 things to be submitted under the demand
12 with such definiteness and certainty as to
13 permit such things to be fairly identified;

14 (ii) prescribe a return date or dates
15 which will provide a reasonable period of
16 time within which the things so demanded
17 may be assembled and submitted; and

18 (iii) identify the custodian to whom
19 such things shall be submitted.

20 (E) DEMAND FOR WRITTEN REPORTS OR
21 ANSWERS.—Each civil investigative demand for
22 written reports or answers to questions shall—

23 (i) propound with definiteness and
24 certainty the reports to be produced or the
25 questions to be answered;

1 (ii) prescribe a date or dates at which
2 time written reports or answers to ques-
3 tions shall be submitted; and

4 (iii) identify the custodian to whom
5 such reports or answers shall be submitted.

6 (F) ORAL TESTIMONY.—Each civil inves-
7 tigative demand for the giving of oral testimony
8 shall—

9 (i) prescribe a date, time, and place at
10 which oral testimony shall be commenced;
11 and

12 (ii) identify a consumer protection
13 agency investigator who shall conduct the
14 investigation and the custodian to whom
15 the transcript of such investigation shall be
16 submitted.

17 (G) SERVICE.—

18 (i) Any civil investigative demand may
19 be served by any consumer protection
20 agency investigator at any place within the
21 territorial jurisdiction of any court of the
22 United States.

23 (ii) Any such demand or any enforce-
24 ment petition filed under this section may
25 be served upon any person who is not

1 found within the territorial jurisdiction of
2 any court of the United States, in such
3 manner as the Federal Rules of Civil Pro-
4 cedure prescribe for service in a foreign
5 nation.

6 (iii) To the extent that the courts of
7 the United States have authority to assert
8 jurisdiction over such person consistent
9 with due process, the United States Dis-
10 trict Court for the District of Columbia
11 shall have the same jurisdiction to take
12 any action respecting compliance with this
13 section by such person that such district
14 court would have if such person were per-
15 sonally within the jurisdiction of such dis-
16 trict court.

17 (H) METHOD OF SERVICE.—Service of any
18 civil investigative demand or any enforcement
19 petition filed under this section may be made
20 upon a person, including any legal entity, by—

21 (i) delivering a duly executed copy of
22 such demand or petition to the individual
23 or to any partner, executive officer, man-
24 aging agent, or general agent of such per-
25 son, or to any agent of such person author-

1 ized by appointment or by law to receive
2 service of process on behalf of such person;

3 (ii) delivering a duly executed copy of
4 such demand or petition to the principal
5 office or place of business of the person to
6 be served; or

7 (iii) depositing a duly executed copy in
8 the United States mails, by registered or
9 certified mail, return receipt requested,
10 duly addressed to such person at its prin-
11 cipal office or place of business.

12 (I) PROOF OF SERVICE.—

13 (i) A verified return by the individual
14 serving any civil investigative demand or
15 any enforcement petition filed under this
16 section setting forth the manner of such
17 service shall be proof of such service.

18 (ii) In the case of service by registered
19 or certified mail, such return shall be ac-
20 companied by the return post office receipt
21 of delivery of such demand or enforcement
22 petition.

23 (J) PRODUCTION OF DOCUMENTARY MATE-
24 RIAL.—The production of documentary material
25 in response to a civil investigative demand shall

1 be made under a sworn certificate, in such form
2 as the demand designates, by the person, if a
3 natural person, to whom the demand is directed
4 or, if not a natural person, by any person hav-
5 ing knowledge of the facts and circumstances
6 relating to such production, to the effect that
7 all of the documentary material required by the
8 demand and in the possession, custody, or con-
9 trol of the person to whom the demand is di-
10 rected has been produced and made available to
11 the custodian.

12 (K) SUBMISSION OF TANGIBLE THINGS.—
13 The submission of tangible things in response
14 to a civil investigative demand shall be made
15 under a sworn certificate, in such form as the
16 demand designates, by the person to whom the
17 demand is directed or, if not a natural person,
18 by any person having knowledge of the facts
19 and circumstances relating to such production,
20 to the effect that all of the tangible things re-
21 quired by the demand and in the possession,
22 custody, or control of the person to whom the
23 demand is directed have been submitted to the
24 custodian.

1 (L) SEPARATE ANSWERS.—Each reporting
2 requirement or question in a civil investigative
3 demand shall be answered separately and fully
4 in writing under oath, unless it is objected to,
5 in which event the reasons for the objection
6 shall be stated in lieu of an answer, and it shall
7 be submitted under a sworn certificate, in such
8 form as the demand designates, by the person,
9 if a natural person, to whom the demand is di-
10 rected or, if not a natural person, by any per-
11 son responsible for answering each reporting re-
12 quirement or question, to the effect that all in-
13 formation required by the demand and in the
14 possession, custody, control, or knowledge of
15 the person to whom the demand is directed has
16 been submitted.

17 (M) TESTIMONY.—

18 (i) PROCEDURE.—

19 (I) OATH AND RECORDATION.—

20 Any consumer protection agency in-
21 vestigator before whom oral testimony
22 is to be taken shall put the witness on
23 oath or affirmation and shall person-
24 ally, or by any individual acting under

1 his direction and in his presence,
2 record the testimony of the witness.

3 (II) TRANSCRIPTIONS.—The tes-
4 timony shall be taken stenographically
5 and transcribed.

6 (III) COPY TO CUSTODIAN.—
7 After the testimony is fully tran-
8 scribed, the consumer protection agen-
9 cy investigator before whom the testi-
10 mony is taken shall promptly transmit
11 a copy of the transcript of the testi-
12 mony to the custodian.

13 (ii) PARTIES PRESENT.—Any con-
14 sumer protection agency investigator be-
15 fore whom oral testimony is to be taken
16 shall exclude from the place where the tes-
17 timony is to be taken all other persons ex-
18 cept the person giving the testimony, his or
19 her attorney, the officer before whom the
20 testimony is to be taken, and any stenog-
21 rapher taking such testimony.

22 (iii) LOCATION.—The oral testimony
23 of any person taken pursuant to a civil in-
24 vestigative demand shall be taken in the
25 judicial district of the United States in

1 which such person resides, is found, or
2 transacts business, or in such other place
3 as may be agreed upon by the consumer
4 protection agency investigator before whom
5 the oral testimony of such person is to be
6 taken and such person.

7 (iv) ATTORNEY REPRESENTATION.—

8 (I) IN GENERAL.—Any person
9 compelled to appear under a civil in-
10 vestigative demand for oral testimony
11 pursuant to this section may be ac-
12 companied, represented, and advised
13 by an attorney.

14 (II) CONFIDENTIAL ADVICE.—

15 The attorney may advise the person
16 summoned, in confidence, either upon
17 the request of such person or upon
18 the initiative of the attorney, with re-
19 spect to any question asked of such
20 person.

21 (III) OBJECTIONS.—The person
22 summoned or the attorney may object
23 on the record to any question, in
24 whole or in part, and shall briefly

1 state for the record the reason for the
2 objection.

3 (IV) REFUSAL TO ANSWER.—An
4 objection may properly be made, re-
5 ceived, and entered upon the record
6 when it is claimed that the person
7 summoned is entitled to refuse to an-
8 swer the question on grounds of any
9 constitutional or other legal right or
10 privilege, including the privilege
11 against self-incrimination, but such
12 person shall not otherwise object to or
13 refuse to answer any question, and
14 shall not otherwise interrupt the oral
15 examination, directly or through such
16 person's attorney.

17 (V) PETITION FOR ORDER.—If
18 such person refuses to answer any
19 question, a consumer protection agen-
20 cy may petition the district court of
21 the United States pursuant to this
22 section for an order compelling such
23 person to answer such question.

24 (VI) BASIS FOR COMPELLING
25 TESTIMONY.—If such person refuses

1 to answer any question on grounds of
2 the privilege against self-incrimina-
3 tion, the testimony of such person
4 may be compelled in accordance with
5 the provisions of section 6004 of title
6 18, United States Code.

7 (v) TRANSCRIPTS.—

8 (I) RIGHT TO EXAMINE.—After
9 the testimony of any witness is fully
10 transcribed, the consumer protection
11 agency investigator shall afford the
12 witness (who may be accompanied by
13 an attorney) a reasonable opportunity
14 to examine the transcript.

15 (II) READING THE TRAN-
16 SCRIPT.—The transcript shall be read
17 to or by the witness, unless such ex-
18 amination and reading are waived by
19 the witness.

20 (III) REQUEST FOR CHANGES.—
21 Any changes in form or substance
22 which the witness desires to make
23 shall be entered and identified upon
24 the transcript by the consumer protec-
25 tion agency investigator with a state-

1 ment of the reasons given by the wit-
2 ness for making such changes.

3 (IV) SIGNATURE.—The tran-
4 script shall be signed by the witness,
5 unless the witness in writing waives
6 the signing, is ill, cannot be found, or
7 refuses to sign.

8 (V) CONSUMER PROTECTION
9 AGENCY ACTION IN LIEU OF SIGNA-
10 TURE.—If the transcript is not signed
11 by the witness during the 30-day pe-
12 riod following the date upon which the
13 witness is first afforded a reasonable
14 opportunity to examine it, the con-
15 sumer protection agency investigator
16 shall sign the transcript and state on
17 the record the fact of the waiver, ill-
18 ness, absence of the witness, or the
19 refusal to sign, together with any rea-
20 sons given for the failure to sign.

21 (vi) CERTIFICATION BY INVESTI-
22 GATOR.—The consumer protection agency
23 investigator shall certify on the transcript
24 that the witness was duly sworn by the in-
25 vestigator and that the transcript is a true

1 record of the testimony given by the wit-
2 ness, and the consumer protection agency
3 investigator shall promptly deliver the
4 transcript or send it by registered or cer-
5 tified mail to the custodian.

6 (vii) COPY OF TRANSCRIPT.—The con-
7 sumer protection agency investigator shall
8 furnish a copy of the transcript (upon pay-
9 ment of reasonable charges for the tran-
10 script) to the witness only, except that the
11 consumer protection agency may for good
12 cause limit such witness to inspection of
13 the official transcript of his testimony.

14 (viii) WITNESS FEES.—Any witness
15 appearing for the taking of oral testimony
16 pursuant to a civil investigative demand
17 shall be entitled to the same fees and mile-
18 age which are paid to witnesses in the dis-
19 trict courts of the United States.

20 (3) CONFIDENTIAL TREATMENT OF DEMAND
21 MATERIAL.—

22 (A) IN GENERAL.—Materials received as a
23 result of a civil investigative demand shall be
24 subject to requirements and procedures regard-
25 ing confidentiality, in accordance with regula-

1 tions established by the consumer protection
2 agency.

3 (B) DISCLOSURE TO CONGRESS.—No regu-
4 lation established by a consumer protection
5 agency regarding the confidentiality of mate-
6 rials submitted to, or otherwise obtained by, the
7 consumer protection agency shall be intended to
8 prevent disclosure to either House of Congress
9 or to an appropriate committee of the Congress,
10 except that the consumer protection agency
11 may prescribe regulations allowing prior notice
12 to any party that owns or otherwise provided
13 the material to the consumer protection agency
14 and has designated such material as confiden-
15 tial.

16 (4) PETITION FOR ENFORCEMENT.—

17 (A) IN GENERAL.—Whenever any person
18 fails to comply with any civil investigative de-
19 mand duly served upon such person under this
20 section, or whenever satisfactory copying or re-
21 production of material requested pursuant to
22 the demand cannot be accomplished and such
23 person refuses to surrender such material, the
24 consumer protection agency, through such offi-
25 cers or attorneys as it may designate, may file,

1 in the district court of the United States for
2 any judicial district in which such person re-
3 sides, is found, or transacts business, and serve
4 upon such person, a petition for an order of
5 such court for the enforcement of this section.

6 (B) SERVICE OF PROCESS.—All process of
7 any court to which application may be made as
8 provided in this subsection may be served in
9 any judicial district.

10 (5) PETITION FOR ORDER MODIFYING OR SET-
11 TING ASIDE DEMAND.—

12 (A) IN GENERAL.—Not later than 20 days
13 after the service of any civil investigative de-
14 mand upon any person under subsection (b), or
15 at any time before the return date specified in
16 the demand, whichever period is shorter, or
17 within such period exceeding 20 days after serv-
18 ice or in excess of such return date as may be
19 prescribed in writing, subsequent to service, by
20 any consumer protection agency investigator
21 named in the demand, such person may file
22 with the consumer protection agency a petition
23 for an order by the consumer protection agency
24 modifying or setting aside the demand.

1 (B) COMPLIANCE DURING PENDENCY.—

2 The time permitted for compliance with the de-
3 mand in whole or in part, as deemed proper
4 and ordered by the consumer protection agency,
5 shall not run during the pendency of such peti-
6 tion at the consumer protection agency, except
7 that such person shall comply with any portions
8 of the demand not sought to be modified or set
9 aside.

10 (C) SPECIFIC GROUNDS.—Such petition
11 shall specify each ground upon which the peti-
12 tioner relies in seeking such relief, and may be
13 based upon any failure of the demand to comply
14 with the provisions of this section, or upon any
15 constitutional or other legal right or privilege of
16 such person.

17 (6) CUSTODIAL CONTROL.—At any time during
18 which any custodian is in custody or control of any
19 documentary material, tangible things, reports, an-
20 swers to questions, or transcripts of oral testimony
21 given by any person in compliance with any civil in-
22 vestigative demand, such person may file, in the dis-
23 trict court of the United States for the judicial dis-
24 trict within which the office of such custodian is sit-
25 uated, and serve upon such custodian, a petition for

1 an order of such court requiring the performance by
2 such custodian of any duty imposed upon such cus-
3 todian by this section or regulation prescribed by the
4 consumer protection agency.

5 (7) JURISDICTION OF COURT.—

6 (A) IN GENERAL.—Whenever any petition
7 is filed in any district court of the United
8 States under this section, such court shall have
9 jurisdiction to hear and determine the matter
10 so presented, and to enter such order or orders
11 as may be required to carry into effect the pro-
12 visions of this section.

13 (B) APPEAL.—Any final order so entered
14 shall be subject to appeal pursuant to section
15 1291 of title 28, United States Code.

16 (c) HEARINGS AND ADJUDICATION PROCEEDINGS.—

17 (1) IN GENERAL.—A consumer protection agen-
18 cy may conduct hearings and adjudication pro-
19 ceedings with respect to any person in the manner
20 prescribed by chapter 5 of title 5, United States
21 Code in order to ensure or enforce compliance
22 with—

23 (A) the provisions of this title, including
24 any regulations prescribed by the consumer pro-
25 tection agency under this title; and

1 (B) any other Federal law that the con-
2 sumer protection agency is authorized to en-
3 force, including a consumer protection law, and
4 any regulations or order prescribed thereunder,
5 unless such Federal law specifically limits the
6 consumer protection agency from conducting a
7 hearing or adjudication proceeding and only to
8 the extent of such limitation.

9 (2) SPECIAL RULES FOR CEASE-AND-DESIST
10 PROCEEDINGS.—

11 (A) ISSUANCE.—

12 (i) NOTICE OF CHARGES.—If, in the
13 opinion of a consumer protection agency,
14 any covered person is engaging or has en-
15 gaged in an activity that violates a law,
16 regulation, or any condition imposed in
17 writing on the person by the consumer pro-
18 tection agency, the consumer protection
19 agency may issue and serve upon the per-
20 son a notice of charges with respect to
21 such violation.

22 (ii) CONTENTS OF NOTICE.—The no-
23 tice shall contain a statement of the facts
24 constituting any alleged violation and shall
25 fix a time and place at which a hearing will

1 be held to determine whether an order to
2 cease-and-desist there from should issue
3 against the person.

4 (iii) TIME OF HEARING.—A hearing
5 under this subsection shall be fixed for a
6 date not earlier than 30 days nor later
7 than 60 days after service of such notice
8 unless an earlier or a later date is set by
9 the consumer protection agency at the re-
10 quest of any party so served.

11 (iv) NONAPPEARANCE DEEMED TO BE
12 CONSENT TO ORDER.—Unless the party or
13 parties so served shall appear at the hear-
14 ing personally or by a duly authorized rep-
15 resentative, they shall be deemed to have
16 consented to the issuance of the cease-and-
17 desist order.

18 (v) ISSUANCE OF ORDER.—In the
19 event of such consent, or if upon the
20 record made at any such hearing, the con-
21 sumer protection agency shall find that
22 any violation specified in the notice of
23 charges has been established, the consumer
24 protection agency may issue and serve

1 upon the person an order to cease-and-de-
2 sist from any such violation or practice.

3 (vi) INCLUDES REQUIREMENT FOR
4 CORRECTIVE ACTION.—Such order may, by
5 provisions which may be mandatory or oth-
6 erwise, require the person to cease-and-de-
7 sist from the same, and, further, to take
8 affirmative action to correct the conditions
9 resulting from any such violation.

10 (B) EFFECTIVENESS OF ORDER.—A cease-
11 and-desist order shall take effect at the end of
12 the 30-day period beginning on the date of the
13 service of such order upon the covered person
14 concerned (except in the case of a cease-and-de-
15 sist order issued upon consent, which shall take
16 effect at the time specified therein), and shall
17 remain effective and enforceable as provided
18 therein, except to such extent as it is stayed,
19 modified, terminated, or set aside by action of
20 the consumer protection agency or a reviewing
21 court.

22 (C) DECISION AND APPEAL.—

23 (i) PLACE OF AND PROCEDURES FOR
24 HEARING.—Any hearing provided for in
25 this subsection shall be held in the Federal

1 judicial district or in the territory in which
2 the residence or home office of the person
3 is located unless the person consents to an-
4 other place, and shall be conducted in ac-
5 cordance with the provisions of chapter 5
6 of title 5 of the United States Code.

7 (ii) TIME LIMIT FOR DECISION.—

8 After such hearing, and within 90 days
9 after the consumer protection agency has
10 notified the parties that the case has been
11 submitted to it for final decision, the con-
12 sumer protection agency shall—

13 (I) render its decision (which
14 shall include findings of fact upon
15 which its decision is predicated) and
16 shall issue; and

17 (II) serve upon each party to the
18 proceeding an order or orders con-
19 sistent with the provisions of this sec-
20 tion. Judicial review of any such order
21 shall be exclusively as provided in this
22 subsection.

23 (iii) MODIFICATION OF ORDER GEN-
24 ERALLY.—Unless a petition for review is
25 timely filed in a court of appeals of the

1 United States, as hereinafter provided in
2 subparagraph (D), and thereafter until the
3 record in the proceeding has been filed as
4 so provided, the consumer protection agen-
5 cy may at any time, upon such notice and
6 in such manner as it shall deem proper,
7 modify, terminate, or set aside any such
8 order.

9 (iv) MODIFICATION OF ORDER AFTER
10 FILING RECORD ON APPEAL.—Upon such
11 filing of the record, the consumer protec-
12 tion agency may modify, terminate, or set
13 aside any such order with permission of
14 the court.

15 (D) APPEAL TO COURT OF APPEALS.—

16 (i) IN GENERAL.—Any party to any
17 proceeding under this subsection may ob-
18 tain a review of any order served pursuant
19 to this subsection (other than an order
20 issued with the consent of the person con-
21 cerned) by the filing in the court of ap-
22 peals of the United States for the circuit
23 in which the principal office of the covered
24 person is located, or in the United States
25 Court of Appeals for the District of Co-

1 Columbia Circuit, within 30 days after the
2 date of service of such order, a written pe-
3 tition praying that the order of the con-
4 sumer protection agency be modified, ter-
5 minated, or set aside.

6 (ii) TRANSMITTAL OF COPY TO THE
7 CONSUMER PROTECTION AGENCY.—A copy
8 of such petition shall be forthwith trans-
9 mitted by the clerk of the court to the con-
10 sumer protection agency, and thereupon
11 the consumer protection agency shall file in
12 the court the record in the proceeding, as
13 provided in section 2112 of title 28, United
14 States Code.

15 (iii) JURISDICTION OF COURT.—Upon
16 the filing of such petition, such court shall
17 have jurisdiction, which upon the filing of
18 the record shall except as otherwise pro-
19 vided be exclusive, to affirm, modify, ter-
20 minate, or set aside, in whole or in part,
21 the order of the consumer protection agen-
22 cy.

23 (iv) SCOPE OF REVIEW.—Review of
24 such proceedings shall be had as provided
25 in chapter 7 of title 5, United States Code.

1 (v) FINALITY.—The judgment and de-
2 cree of the court shall be final, except that
3 the same shall be subject to review by the
4 Supreme Court upon certiorari, as pro-
5 vided in section 1254 of title 28, United
6 States Code.

7 (E) NO STAY.—The commencement of pro-
8 ceedings for judicial review under subparagraph
9 (D) shall not, unless specifically ordered by the
10 court, operate as a stay of any order issued by
11 the agency.

12 (3) SPECIAL RULES FOR TEMPORARY CEASE-
13 AND-DESIST PROCEEDINGS.—

14 (A) ISSUANCE.—

15 (i) IN GENERAL.—Whenever the con-
16 sumer protection agency determines that
17 the violation specified in the notice of
18 charges served upon a person pursuant to
19 paragraph (2), or the continuation thereof,
20 is likely to cause the person to be insolvent
21 or otherwise prejudice the interests of con-
22 sumers before the completion of the pro-
23 ceedings conducted pursuant to paragraph
24 (2), the consumer protection agency may
25 issue a temporary order requiring the cov-

1 ered person to cease-and-desist from any
2 such violation or practice and to take af-
3 firmative action to prevent or remedy such
4 insolvency or other condition pending com-
5 pletion of such proceedings.

6 (ii) OTHER REQUIREMENTS.—Any
7 temporary order issued under this para-
8 graph may include any requirement au-
9 thorized under this section.

10 (iii) EFFECT DATE OF ORDER.—Any
11 temporary order issued under this para-
12 graph shall take effect upon service upon
13 the person and, unless set aside, limited, or
14 suspended by a court in proceedings au-
15 thorized by subparagraph (B), shall remain
16 effective and enforceable pending the com-
17 pletion of the administrative proceedings
18 pursuant to such notice and until such
19 time as the consumer protection agency
20 shall dismiss the charges specified in such
21 notice, or if a cease-and-desist order is
22 issued against the person, until the effec-
23 tive date of such order.

24 (B) APPEAL.—Within 10 days after the
25 person concerned has been served with a tem-

1 porary cease-and-desist order, the person may
2 apply to the United States district court for the
3 judicial district in which the home office of the
4 covered person is located, or the United States
5 District Court for the District of Columbia, for
6 an injunction setting aside, limiting, or sus-
7 pending the enforcement, operation, or effec-
8 tiveness of such order pending the completion
9 of the administrative proceedings pursuant to
10 the notice of charges served upon the person
11 under paragraph (2), and such court shall have
12 jurisdiction to issue such injunction.

13 (C) INCOMPLETE OR INACCURATE
14 RECORDS.—

15 (i) TEMPORARY ORDER.—If a notice
16 of charges served under paragraph (2)
17 specifies, on the basis of particular facts
18 and circumstances, that a person's books
19 and records are so incomplete or inac-
20 curate that the consumer protection agency
21 is unable to determine the financial condi-
22 tion of that person or the details or pur-
23 pose of any transaction or transactions
24 that may have a material effect on the fi-
25 nancial condition of that person, the con-

1 consumer protection agency may issue a tem-
2 porary order requiring—

3 (I) the cessation of any activity
4 or practice which gave rise, whether in
5 whole or in part, to the incomplete or
6 inaccurate state of the books or
7 records; or

8 (II) affirmative action to restore
9 such books or records to a complete
10 and accurate state, until the comple-
11 tion of the proceedings under para-
12 graph(2)(A).

13 (ii) EFFECTIVE PERIOD.—Any tem-
14 porary order issued under clause (i)—

15 (I) shall take effect upon service;

16 and

17 (II) unless set aside, limited, or
18 suspended by a court in proceedings
19 under subparagraph (B), shall remain
20 in effect and enforceable until the ear-
21 lier of—

22 (aa) the completion of the
23 proceeding initiated under para-
24 graph (2) in connection with the
25 notice of charges; or

1 (bb) the date the consumer
2 protection agency determines, by
3 examination or otherwise, that
4 the person's books and records
5 are accurate and reflect the fi-
6 nancial condition of the person.

7 (4) SPECIAL RULES FOR ENFORCEMENT OF OR-
8 DERS.—

9 (A) IN GENERAL.—The consumer protec-
10 tion agency may in its discretion apply to the
11 United States district court within the jurisdic-
12 tion of which the principal office of the covered
13 person is located, for the enforcement of any ef-
14 fective and outstanding notice or order issued
15 under this section, and such court shall have ju-
16 risdiction and power to order and require com-
17 pliance herewith.

18 (B) EXCEPTION.—Except as otherwise
19 provided in this subsection, no court shall have
20 jurisdiction to affect by injunction or otherwise
21 the issuance or enforcement of any notice or
22 order or to review, modify, suspend, terminate,
23 or set aside any such notice or order.

24 (5) REGULATIONS.—The consumer protection
25 agencies shall prescribe regulations establishing such

1 procedures as may be necessary to carry out this
2 section.

3 (d) LITIGATION AUTHORITY.—

4 (1) IN GENERAL.—If any person violates a pro-
5 vision of this title, any consumer protection law or
6 any regulation prescribed or order issued by a con-
7 sumer protection agency, the CFPS, or the Council
8 under this title or pursuant to any such authority,
9 a consumer protection agency may commence a civil
10 action against such person to impose a civil penalty
11 or to seek all appropriate legal or equitable relief in-
12 cluding a permanent or temporary injunction as per-
13 mitted by law.

14 (2) REPRESENTATION.—A consumer protection
15 agency may act in its own name and through its own
16 attorneys in enforcing any provision of this title, reg-
17 ulations under this title, or any other law or regula-
18 tion, or in any action, suit, or proceeding to which
19 the consumer protection agency is a party.

20 (3) COMPROMISE OF ACTIONS.—A consumer
21 protection agency may compromise or settle any ac-
22 tion if such compromise is approved by the court.

23 (4) NOTICE TO THE ATTORNEY GENERAL.—
24 When commencing a civil action under this title, any
25 consumer protection law or any regulation there-

1 under, a consumer protection agency shall notify the
2 Attorney General.

3 (5) FORUM.—Any civil action brought under
4 this title may be brought in a United States district
5 court or in any court of competent jurisdiction of a
6 State in a district in which the defendant is located
7 or resides or is doing business, and such court shall
8 have jurisdiction to enjoin such person and to re-
9 quire compliance with this title, any consumer pro-
10 tection law or any regulation prescribed or order
11 issued by a consumer protection agency, the CFPS,
12 or the Council under this title or pursuant to any
13 such authority.

14 (6) TIME FOR BRINGING ACTION.—

15 (A) IN GENERAL.—Except as otherwise
16 permitted by law, no action may be brought
17 under this title more than 3 years after the vio-
18 lation to which an action relates.

19 (B) LIMITATIONS UNDER OTHER FEDERAL
20 LAWS.—

21 (i) For purposes of this subsection, an
22 action arising under this title shall not in-
23 clude claims arising solely under consumer
24 protection laws.

1 (ii) In any action arising solely under
2 a consumer protection law, a consumer
3 protection agency may commence, defend,
4 or intervene in the action in accordance
5 with the requirements of that law, as appli-
6 cable.

7 (e) RELIEF AVAILABLE.—

8 (1) ADMINISTRATIVE PROCEEDINGS OR COURT
9 ACTIONS.—

10 (A) JURISDICTION.—The court (or con-
11 sumer protection agency, as the case may be) in
12 an action or adjudication proceeding brought
13 under this title or any consumer protection law
14 shall have jurisdiction to grant any appropriate
15 legal or equitable relief with respect to a viola-
16 tion of this title or any consumer protection
17 law, including a violation of a regulation pre-
18 scribed or order issued under this title or any
19 consumer protection law.

20 (B) RELIEF.—Such relief may include—

21 (i) rescission or reformation of con-
22 tracts;

23 (ii) refund of moneys or return of real
24 property;

25 (iii) restitution;

- 1 (iv) compensation for unjust enrich-
2 ment;
3 (v) payment of damages;
4 (vi) public notification regarding the
5 violation, including the costs of notifica-
6 tion;
7 (vii) limits on the activities or func-
8 tions of the person; and
9 (viii) civil money penalties, as set
10 forth more fully in paragraph (4).

11 (C) NO EXEMPLARY OR PUNITIVE DAM-
12 AGES.—Nothing in this paragraph shall be con-
13 strued as authorizing the imposition of exem-
14 plary or punitive damages.

15 (2) RECOVERY OF COSTS.—In any action
16 brought by a consumer protection agency to enforce
17 any provision of this title, any consumer protection
18 law, or any regulation prescribed or order issued by
19 a consumer protection agency, the CFPS, or the
20 Council under this title or pursuant to any such au-
21 thority, a consumer protection agency may recover
22 its costs in connection with prosecuting such action
23 if the consumer protection agency is the prevailing
24 party in the action.

1 (3) CIVIL MONEY PENALTY IN COURT AND AD-
2 MINISTRATIVE ACTIONS.—

3 (A) Any person that violates any provision
4 of this title, any consumer protection law, or
5 any regulation prescribed or order issued by a
6 consumer protection agency, the CFPS, or the
7 Council under this title shall forfeit and pay a
8 civil penalty pursuant to this paragraph deter-
9 mined as follows:

10 (i) FIRST TIER.—For any violation of
11 a final order or condition imposed in writ-
12 ing by a consumer protection agency, a
13 civil penalty shall not exceed \$5,000 for
14 each day during which such violation con-
15 tinues.

16 (ii) SECOND TIER.—Notwithstanding
17 clause (i), for any person that knowingly
18 violates this title, any consumer protection
19 law, or any regulation prescribed or order
20 issued by a consumer protection agency,
21 the CFPS, or the Council under this title,
22 a civil penalty shall not exceed \$1,000,000
23 for each day during which such violation
24 continues.

1 (B) MITIGATING FACTORS.—In deter-
2 mining the amount of any penalty assessed
3 under subparagraph (A), the consumer protec-
4 tion agency or the court shall take into account
5 the appropriateness of the penalty with respect
6 to—

7 (i) the size of financial resources and
8 good faith of the person charged;

9 (ii) the gravity of the violation;

10 (iii) the severity of the risks to or
11 losses of the consumer, which may take
12 into account the number of products or
13 services sold or provided;

14 (iv) the history of previous violations;
15 and

16 (v) such other matters as justice may
17 require.

18 (C) AUTHORITY TO MODIFY OR REMIT
19 PENALTY.—The consumer protection agency
20 may compromise, modify, or remit any penalty
21 which may be assessed or had already been as-
22 sessed under subparagraph (A). The amount of
23 such penalty, when finally determined, shall be
24 exclusive of any sums owed by the person to the
25 United States in connection with the costs of

1 the proceeding, and may be deducted from any
2 sums owing by the United States to the person
3 charged.

4 (D) NOTICE AND HEARING.—No civil pen-
5 alty may be assessed with respect to a violation
6 of this title, any consumer protection law, or
7 any regulation prescribed or order issued by a
8 consumer protection agency, the CFPS, or the
9 Council, unless—

10 (i) the consumer protection agency
11 gives notice and an opportunity for a hear-
12 ing to the person accused of the violation;
13 or

14 (ii) the appropriate court has ordered
15 such assessment and entered judgment in
16 favor of the consumer protection agency.

17 (f) REFERRALS FOR CRIMINAL PROCEEDINGS.—
18 Whenever a consumer protection agency obtains evidence
19 that any person, either domestic or foreign, has engaged
20 in conduct that may constitute a violation of Federal
21 criminal law, the consumer protection agency shall have
22 the power to transmit such evidence to the Attorney Gen-
23 eral, who may institute criminal proceedings under appro-
24 priate law. Nothing in this section affects any other au-

1 thority of the consumer protection agency to disclose infor-
2 mation.

3 (g) EMPLOYEE PROTECTION.—

4 (1) IN GENERAL.—No person shall terminate or
5 in any other way discriminate against, or cause to
6 be terminated or discriminated against, any em-
7 ployee or any authorized representative of employees
8 by reason of the fact that such employee or rep-
9 resentative has provided information to a consumer
10 protection agency, the CFPS, or the Council, filed,
11 instituted or caused to be filed or instituted any pro-
12 ceeding under this title, any consumer protection
13 law, or has testified or is about to testify in any pro-
14 ceeding resulting from the administration or enforce-
15 ment of the provisions of this title.

16 (2) CONSUMER PROTECTION AGENCY REVIEW
17 OF TERMINATION.—

18 (A) APPLICATION FOR REVIEW.—Any em-
19 ployee or representative of employees who be-
20 lieves that he has been terminated or otherwise
21 discriminated against by any person in violation
22 of paragraph (1) may, within 45 days after
23 such alleged violation occurs, apply to a con-
24 sumer protection agency for review of such ter-
25 mination or alleged discrimination.

1 (B) COPY TO RESPONDENT.—A copy of
2 the application shall be sent to the person who
3 is alleged to have terminated or otherwise dis-
4 criminated against an employee, and such per-
5 son shall be the respondent.

6 (C) INVESTIGATION.—Upon receipt of such
7 application, the consumer protection agency
8 shall cause such investigation to be made as the
9 consumer protection agency deems appropriate.

10 (D) HEARING.—Any investigation under
11 this paragraph shall provide an opportunity for
12 a public hearing at the request of any party to
13 such review to enable the parties to present in-
14 formation relating to such alleged violation.

15 (E) NOTICE OF TIME AND PLACE FOR
16 HEARING.—The parties shall be given written
17 notice of the time and place of the hearing at
18 least 5 days prior to the hearing.

19 (F) PROCEDURE.—Any hearing under this
20 paragraph shall be of record and shall be sub-
21 ject to section 554 of title 5, United States
22 Code.

23 (G) DETERMINATION.—

24 (i) IN GENERAL.—Upon receiving the
25 report of such investigation, the consumer

1 protection agency shall make findings of
2 fact.

3 (ii) ISSUANCE OF DECISION.—If the
4 consumer protection agency finds that
5 there is sufficient evidence in the record to
6 conclude that such a violation did occur,
7 the consumer protection agency shall issue
8 a decision, incorporating an order therein
9 and the consumer protection agency's find-
10 ings, requiring the party committing such
11 violation to take such affirmative action to
12 abate the violation as the consumer protec-
13 tion agency deems appropriate, including
14 reinstating or rehiring the employee or rep-
15 resentative of employees to the former po-
16 sition with compensation.

17 (iii) DENIAL OF APPLICATION.—If the
18 consumer protection agency finds insuffi-
19 cient evidence to support the allegations
20 made in the application, the consumer pro-
21 tection agency shall deny the application.

22 (H) JUDICIAL REVIEW.—An order issued
23 by the consumer protection agency under this
24 paragraph (2) shall be subject to judicial review
25 in the same manner as orders and decisions are

1 subject to judicial review under this title or any
2 consumer protection law.

3 (3) **COSTS AND EXPENSES.**—Whenever an order
4 is issued under this subsection to abate such viola-
5 tion, at the request of the applicant a sum equal to
6 the aggregate amount of all costs and expenses (in-
7 cluding attorney’s fees) determined by the consumer
8 protection agency to have been reasonably incurred
9 by the applicant for, or in connection with, the appli-
10 cation and prosecution of such proceedings shall be
11 assessed against the person committing such viola-
12 tion.

13 (4) **EXCEPTION.**—This subsection shall not
14 apply to any employee who acting without discretion
15 from the employer of such employee (or the employ-
16 er’s agent) deliberately violates any requirement of
17 this title or any consumer protection law.

18 (h) **EXCLUSION FOR PERSONS REGULATED BY A**
19 **STATE INSURANCE REGULATOR.**—

20 (1) **IN GENERAL.**—No provision of this title
21 shall be construed as altering, amending, or affect-
22 ing the authority of any State insurance regulator to
23 adopt rules, initiate enforcement proceedings, or
24 take any other action with respect to a person regu-
25 lated by any State insurance regulator. Except as

1 provided in paragraphs (2) and (3), the Council and
2 the CFPS shall have no authority to exercise any
3 power to enforce this title with respect to a person
4 regulated by any State insurance regulator.

5 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
6 (1) shall not apply to any person described in such
7 paragraph to the extent such person is engaged in
8 any financial activity described in any subparagraph
9 of section 4018(15) or is otherwise subject to any of
10 the enumerated consumer laws or the authorities
11 transferred under section 4018(6).

12 (3) PRESERVATION OF CERTAIN AUTHORI-
13 TIES.—Nothing in this title shall be construed as
14 limiting the authority of the Council or the CFPS
15 from exercising powers under this Act with respect
16 to a person, other than a person regulated by a
17 State insurance regulator, who provides a product or
18 service for or on behalf of a person regulated by a
19 State insurance regulator in connection with a finan-
20 cial activity.

21 **SEC. 4016. COLLECTION OF DEPOSIT ACCOUNT DATA.**

22 (a) PURPOSE.—The purpose of this section is to pro-
23 mote awareness and understanding of the access of indi-
24 viduals and communities to financial services, and to iden-

1 tify business and community development needs and op-
2 portunities.

3 (b) IN GENERAL.—

4 (1) RECORDS REQUIRED.—For each branch,
5 automated teller machine at which deposits are ac-
6 cepted, and other deposit taking service facility with
7 respect to any financial institution, the financial in-
8 stitution shall maintain records of the number and
9 dollar amounts of deposit accounts of customers.

10 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—

11 The customers' addresses maintained pursuant to
12 paragraph (1) shall be geo-coded so that data shall
13 be collected regarding the census tracts of the resi-
14 dence or business location of the customers.

15 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
16 maintaining records on any deposit account under
17 this section, the financial institution shall also
18 record whether the deposit account is for a residen-
19 tial or commercial customer.

20 (4) PUBLIC AVAILABILITY.—

21 (A) IN GENERAL.—The following informa-
22 tion shall be publicly available on an annual
23 basis—

24 (i) the address and census tracts of
25 each branch, automated teller machine at

1 which deposits are accepted, and other de-
2 posit taking service facility with respect to
3 any financial institution;

4 (ii) the type of deposit account includ-
5 ing whether the account was a checking or
6 savings account; and

7 (iii) data on the number and dollar
8 amounts of the accounts, presented by cen-
9 sus tract location of the residential and
10 commercial customers.

11 (B) PROTECTION OF IDENTITY.—In the
12 publicly available data, any personally identifi-
13 able data element shall be removed so as to pro-
14 tect the identities of the commercial and resi-
15 dential customers.

16 (c) AVAILABILITY OF INFORMATION.—

17 (1) SUBMISSION TO AGENCIES.—The data re-
18 quired to be compiled and maintained under this
19 section by any financial institution shall be sub-
20 mitted annually to the a Federal banking agency, in
21 accordance with rules prescribed by the Federal
22 banking agencies.

23 (2) AVAILABILITY OF INFORMATION.—Informa-
24 tion compiled and maintained under this section
25 shall be retained for not less than 3 years after the

1 date of preparation and shall be made available to
2 the public, upon request, in the form required under
3 rules prescribed by the Federal banking agencies.

4 (d) FEDERAL BANKING AGENCY USE.—The Federal
5 banking agencies—

6 (1) shall assess the distribution of residential
7 and commercial accounts at such financial institu-
8 tion across income and minority level of census
9 tracts; and

10 (2) may use the data for any other purpose as
11 permitted by law.

12 (e) REGULATIONS AND GUIDANCE.—

13 (1) IN GENERAL.—The Federal banking agen-
14 cies shall prescribe such regulations and issue guid-
15 ance as may be necessary to carry out, enforce, and
16 compile data pursuant to this section.

17 (2) DATA COMPILATION REGULATIONS.—The
18 Federal banking agencies shall prescribe regulations
19 regarding the provision of data compiled under this
20 section to such agencies to carry out the purposes of
21 this section and shall issue guidance to financial in-
22 stitutions regarding measures to facilitate compli-
23 ance with the this section and the requirements of
24 regulations prescribed under this section.

1 (f) DEFINITIONS.—For purposes of this section, and
2 notwithstanding section 4018, the following definitions
3 shall apply:

4 (1) CREDIT UNION.—The term “credit union”
5 means a Federal credit union or a State-chartered
6 credit union (as such terms are defined in section
7 101 of the Federal Credit Union Act).

8 (2) DEPOSIT ACCOUNT.—The term “deposit ac-
9 count” includes any checking account, savings ac-
10 count, credit union share account, and other type of
11 account as defined by the consumer protection agen-
12 cies.

13 (3) FEDERAL BANKING AGENCY.—The term
14 “Federal banking agency” means the Board of Gov-
15 ernors of the Federal Reserve System, the head of
16 the agency responsible for chartering and regulating
17 national banks, the Director of the Office of Thrift
18 Supervision, the Federal Deposit Insurance Corpora-
19 tion, and the National Credit Union Administration;
20 and the term “Federal banking agencies” means all
21 of those agencies.

22 (4) FINANCIAL INSTITUTION.—The term “fi-
23 nancial institution”—

1 (A) has the meaning given to the term “in-
2 sured depository institution” in section 3(c)(2)
3 of the Federal Deposit Insurance Act; and

4 (B) includes any credit union.

5 **SEC. 4017. CONFIDENTIALITY.**

6 The Council, the Financial Institutions Examination
7 Council, the CFPS, and the consumer protection agencies
8 shall each issue regulations regarding the confidential
9 treatment of information obtained from persons in connec-
10 tion with the exercise of such entity’s authorities under
11 this title. Such regulations shall, to the extent practicable,
12 mirror the provisions provided for the confidential treat-
13 ment of financial records under the Right to Financial
14 Privacy Act of 1978 (12 U.S.C. 3401).

15 **SEC. 4018. DEFINITIONS.**

16 For purposes of this title:

17 (1) **AFFILIATE.**—The term “affiliate” means
18 any person that controls, is controlled by, or is
19 under common control with another person.

20 (2) **BOARD OF GOVERNORS.**—The term “Board
21 of Governors” means the Board of Governors of the
22 Federal Reserve System.

23 (3) **CFPS.**—The term “CFPS” means the Con-
24 sumer Financial Protection Subcommittee estab-
25 lished under section 4003.

1 (4) CONSUMER.—The term “consumer” means
2 an individual or an agent, trustee, or representative
3 acting on behalf of an individual.

4 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
5 ICE.—The term “consumer financial product or
6 service” means any financial product or service to be
7 used by a consumer primarily for personal, family,
8 or household purposes.

9 (6) CONSUMER PROTECTION LAWS.—The term
10 “consumer protection laws” means each of the fol-
11 lowing:

12 (A) The Alternative Mortgage Transaction
13 Parity Act (12 U.S.C. 3801 et seq.).

14 (B) The Electronic Funds Transfer Act
15 (15 U.S.C. 1693 et seq.)

16 (C) The Equal Credit Opportunity Act (15
17 U.S.C. 1691 et seq.).

18 (D) The Fair Credit Reporting Act (15
19 U.S.C. 1681 et seq.), except with respect to sec-
20 tions 615(e), 624, and 628.

21 (E) The Fair Debt Collection Practices Act
22 (15 U.S.C. 1692 et seq.).

23 (F) Subsections (c), (d), (e), and (f) of sec-
24 tion 43 of the Federal Deposit Insurance Act
25 (12 U.S.C. 1831t).

1 (G) Sections 502, 503, 504, 505, 506,
2 507, 508, and 509 of the Gramm-Leach-Bliley
3 Act (15 U.S.C. 6802 et seq.).

4 (H) The Home Mortgage Disclosure Act
5 (12 U.S.C. 2801 et seq.).

6 (I) The Real Estate Settlement Procedures
7 Act (12 U.S.C. 2601 et seq.).

8 (J) The Secure and Fair Enforcement for
9 Mortgage Licensing Act (12 U.S.C. 5101 et
10 seq.).

11 (K) The Truth in Lending Act (15 U.S.C.
12 1601 et seq.).

13 (L) The Truth in Savings Act (12 U.S.C.
14 4301 et seq.).

15 (7) CONSUMER PROTECTION AGENCY.—Except
16 as provided in section 4015, the term “consumer
17 protection agency” means—

18 (A) the Federal Reserve System;

19 (B) the Office of the Comptroller of the
20 Currency;

21 (C) the Office of Thrift Supervision;

22 (D) the Federal Deposit Insurance Cor-
23 poration;

24 (E) the Federal Trade Commission;

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

3 (G) the Department of the Treasury;

4 (H) the Department of Housing and
5 Urban Development;

6 (I) the Securities and Exchange Commis-
7 sion; and

8 (J) the Commodity Futures Trading Com-
9 mission.

10 (8) COUNCIL.—The term “council” means the
11 Consumer Financial Protection Council established
12 under section 2.

13 (9) COVERED PERSON.—

14 (A) IN GENERAL.—The term “covered per-
15 son” means—

16 (i) any person who engages directly or
17 indirectly in a financial activity, in connec-
18 tion with the provision of a consumer fi-
19 nancial product or service; or

20 (ii) any person who, in connection
21 with the provision of a consumer financial
22 product or service, provides a material
23 service to, or processes a transaction on
24 behalf of, a person described in subpara-
25 graph (A).

1 (B) EXCEPTION.—The term “covered per-
2 son” does not include a person regulated by a
3 State insurance regulator.

4 (10) CREDIT.—The term “credit” means the
5 right granted by a person to a consumer to defer
6 payment of a debt, incur debt and defer its payment,
7 or purchase property or services and defer payment
8 for such purchase.

9 (11) CREDIT UNION.—The term “credit union”
10 means a Federal credit union, State credit union, or
11 State-chartered credit union as defined in section
12 101 of the Federal Credit Union Act (12 U.S.C.
13 1752).

14 (12) DEPOSIT.—The term “deposit”—
15 (A) has the same meaning as in section
16 3(l) of the Federal Deposit Insurance Act; and
17 (B) includes a share in a member account
18 (as defined in section 101(5) of the Federal
19 Credit Union Act) at a credit union.

20 (13) DEPOSIT-TAKING ACTIVITY.—The term
21 “deposit-taking activity” means—

22 (A) the acceptance of deposits, the provi-
23 sion of other services related to the acceptance
24 of deposits, or the maintenance of deposit ac-
25 counts;

1 (B) the acceptance of money, the provision
2 of other services related to the acceptance of
3 money, or the maintenance of members' share
4 accounts by a credit union; or

5 (C) the receipt of money or its equivalent,
6 as a consumer protection agency may determine
7 by regulation or order, received or held by the
8 covered person (or an agent for the person) for
9 the purpose of facilitating a payment or trans-
10 ferring funds or value of funds by a consumer
11 to a third party.

12 For the purposes of this title, the consumer protec-
13 tion agencies may determine that the term "deposit-
14 taking activity" includes the receipt of money or its
15 equivalent in connection with the sale or issuance of
16 any payment instrument or stored value product or
17 service.

18 (14) FEDERAL BANKING AGENCY.—The term
19 "Federal banking agency" means the Board of Gov-
20 ernors, the Comptroller of the Currency, the Direc-
21 tor of the Office of Thrift Supervision, the Federal
22 Deposit Insurance Corporation, or the National
23 Credit Union Administration and the term "Federal
24 banking agencies" means all of those agencies.

1 (15) **FINANCIAL ACTIVITY.**—The term “finan-
2 cial activity” means any of the following activities:

3 (A) **Deposit-taking activities.**

4 (B) **Extending credit and servicing loans,**
5 **including—**

6 (i) **acquiring, brokering, or servicing**
7 **loans or other extensions of credit;**

8 (ii) **engaging in any other activity**
9 **usual in connection with extending credit**
10 **or servicing loans, including performing**
11 **appraisals of real estate and personal prop-**
12 **erty and selling or servicing credit insur-**
13 **ance or mortgage insurance.**

14 (C) **Check-guaranty services, including—**

15 (i) **authorizing a subscribing merchant**
16 **to accept personal checks tendered by the**
17 **merchant’s customers in payment for**
18 **goods and services; and**

19 (ii) **purchasing from a subscribing**
20 **merchant validly authorized checks that**
21 **are subsequently dishonored.**

22 (D) **Collecting, analyzing, maintaining, and**
23 **providing consumer report information or other**
24 **account information by covered persons, includ-**
25 **ing information relating to the credit history of**

1 consumers and providing the information to a
2 credit grantor who is considering a consumer
3 application for credit or who has extended cred-
4 it to the borrower.

5 (E) Collection of debt related to any con-
6 sumer financial product or service.

7 (F) Providing real estate settlement serv-
8 ices, including providing title insurance.

9 (G) Leasing personal or real property or
10 acting as agent, broker, or adviser in leasing
11 such property if—

12 (i) the lease is on a non-operating
13 basis;

14 (ii) the initial term of the lease is at
15 least 90 days; and

16 (iii) in the case of leases involving real
17 property, at the inception of the initial
18 lease, the transaction is intended to result
19 in ownership of the leased property to be
20 transferred to the lessee, subject to stand-
21 ards prescribed by the consumer protection
22 agencies.

23 (H) Acting as an investment adviser to any
24 person (not subject to regulation by or required
25 to register with the Commodity Futures Trad-

1 ing Commission or the Securities and Exchange
2 Commission).

3 (I) Acting as financial adviser to any per-
4 son, including—

5 (i) providing financial and other re-
6 lated advisory services;

7 (ii) providing educational courses, and
8 instructional materials to consumers on in-
9 dividual financial management matters; or

10 (iii) providing credit counseling, tax-
11 planning or tax-preparation services to any
12 person.

13 (J) Financial data processing, including
14 providing data processing and data trans-
15 mission services, facilities (including data proc-
16 essing and data transmission hardware, soft-
17 ware, documentation, or operating personnel),
18 databases, advice, and access to such services,
19 facilities, or databases by any technological
20 means, if—

21 (i) the data to be processed or fur-
22 nished are financial, banking, or economic;
23 and

24 (ii) the hardware provided in connec-
25 tion therewith is offered only in conjunc-

1 tion with software designed and marketed
2 for the processing and transmission of fi-
3 nancial, banking, or economic data, and
4 where the general purpose hardware does
5 not constitute more than 30 percent of the
6 cost of any packaged offering.

7 (K) Money transmitting.

8 (L) Sale or issuance of stored value.

9 (M) Acting as a money services business.

10 (N) Acting as a custodian of money or any
11 financial instrument.

12 (O) Any other activity that the consumer
13 protection agencies define, by regulation, as a
14 financial activity for the purposes of this title.

15 (P) Except that the term “financial activ-
16 ity” shall not include the business of insurance.

17 (16) FINANCIAL PRODUCT OR SERVICE.—The
18 term “financial product or service” means any prod-
19 uct or service that, directly or indirectly, results
20 from or is related to engaging in 1 or more financial
21 activities.

22 (17) FOREIGN EXCHANGE.—The term “foreign
23 exchange” means the exchange, for compensation, of
24 currency of the United States or of a foreign govern-
25 ment for currency of another government.

1 (18) **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 (19) **MONEY SERVICES BUSINESS.**—The term
6 “money services business” means a covered person
7 that—

8 (A) receives currency, monetary value, or
9 payment instruments for the purpose of ex-
10 changing or transmitting the same by any
11 means, including transmission by wire, fac-
12 simile, electronic transfer, courier, the Internet,
13 or through bill payment services, or other busi-
14 nesses that facilitate third-party transfers with-
15 in the United States or to or from the United
16 States; or

17 (B) issues payment instruments or stored
18 value.

19 (20) **MONEY TRANSMITTING.**—The term
20 “money transmitting” means the receipt by a cov-
21 ered person of currency, monetary value, or payment
22 instruments for the purpose of transmitting the
23 same to any third-party by any means, including
24 transmission by wire, facsimile, electronic transfer,

1 courier, the Internet, or through bill payment serv-
2 ices.

3 (21) PAYMENT INSTRUMENT.—The term “pay-
4 ment instrument” means a check, draft, warrant,
5 money order, traveler’s check, electronic instrument,
6 or other instrument, payment of money, or monetary
7 value (other than currency).

8 (22) PERSON.—The term “person” means an
9 individual, partnership, company, corporation, asso-
10 ciation (incorporated or unincorporated), trust, es-
11 tate, cooperative organization, or other entity.

12 (23) PERSON REGULATED BY A STATE INSUR-
13 ANCE REGULATOR.—The term “person regulated by
14 a State insurance regulator” means any person who
15 is—

16 (A) engaged in the business of insurance;
17 and

18 (B) subject to regulation by any State in-
19 surance regulator, but only to the extent that
20 such person acts in such capacity.

21 (24) PERSON REGULATED BY THE COMMODITY
22 FUTURES TRADING COMMISSION.—The term “person
23 regulated by the Commodity Futures Trading Com-
24 mission” means any futures commission merchant,
25 commodity trading adviser, commodity pool oper-

1 ator, or introducing broker that is subject to the ju-
2 risdiction of the Commodity Futures Trading Com-
3 mission under the Commodity Exchange Act, but
4 only to the extent that the person acts in such ca-
5 pacity.

6 (25) PERSON REGULATED BY THE SECURITIES
7 AND EXCHANGE COMMISSION.—The term “person
8 regulated by the Securities and Exchange Commis-
9 sion” means—

10 (A) a broker or dealer that is required to
11 be registered under the Securities Exchange Act
12 of 1934;

13 (B) an investment adviser that is required
14 to be registered under the Investment Advisers
15 Act of 1940; or

16 (C) an investment company that is re-
17 quired to be registered under the Investment
18 Company Act of 1940—

19 but only to the extent that the person acts in a reg-
20 istered capacity.

21 (26) PROVISION OF A CONSUMER FINANCIAL
22 PRODUCT OR SERVICE.—The term “provision of (or
23 providing) a consumer financial product or service”
24 means the advertisement, marketing, solicitation,

1 sale, disclosure, delivery, or account maintenance or
2 servicing of a consumer financial product or service.

3 (27) RESIDENTIAL MORTGAGE LOAN.—The
4 term “residential mortgage loan” shall have the
5 meaning given such term in section 1503(8) of the
6 Secure and Fair Enforcement for Mortgage Licens-
7 ing Act of 2008.

8 (28) SECRETARY.—The term “Secretary”
9 means the Secretary of the Treasury.

10 (29) STATE.—The term “State” means any
11 State, territory, or possession of the United States,
12 the District of Columbia, Commonwealth of Puerto
13 Rico, Commonwealth of the Northern Mariana Is-
14 lands, Guam, American Samoa, or the United States
15 Virgin Islands.

16 (30) STORED VALUE.—The term “stored value”
17 means funds or monetary value represented in any
18 electronic format, whether or not specially encrypted,
19 and stored or capable of storage on electronic media
20 in such a way as to be retrievable and transferred
21 electronically, and includes a prepaid debit card or
22 product, or any other similar product, regardless of
23 whether the amount of the funds or monetary value
24 may be increased or reloaded.

1 **SEC. 4019. AUTHORIZATION OF APPROPRIATIONS.**

2 There is hereby authorized to be appropriated such

3 sums as may be necessary to carry out this title.

