

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO  
H.R. 4173  
OFFERED BY MR. BACHUS OF ALABAMA, MRS.  
BIGGERT OF ILLINOIS, MR. GARRETT OF NEW  
JERSEY, MR. NEUGEBAUER OF TEXAS, MR.  
HENSARLING OF TEXAS, AND MRS. CAPITO OF  
WEST VIRGINIA**

Strike all after the enacting clause and insert the following:

**1 SEC. 1. SHORT TITLE.**

2 This Act may be cited as the “Consumer and Tax-  
3 payer Protection Act of 2009”.

**4 SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—NO MORE BAILOUTS ACT

- Sec. 1001. Short title.
- Sec. 1002. Amendments to title 28 of the United States Code.
- Sec. 1003. Amendments to title 11 of the United States Code.
- Sec. 1004. Effective date; application of amendments.
- Sec. 1005. Reforms of section 13 emergency powers.
- Sec. 1006. Establishment of Market Stability and Capital Adequacy Board.
- Sec. 1007. Functions of Board.
- Sec. 1008. Powers of Board.
- Sec. 1009. Responsibilities of Federal functional regulators.
- Sec. 1010. Staff of Board.
- Sec. 1011. Compensation and travel expenses.

TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION  
AND EXAMINATION COUNCIL

- Sec. 2001. Short title.
- Sec. 2002. Definitions.
- Sec. 2003. Financial Institutions Consumer Protection and Examination Council.
- Sec. 2004. Office of consumer protection.
- Sec. 2005. State enforcement authority.
- Sec. 2006. Unfair or deceptive acts or practices authority transferred.
- Sec. 2007. Equality of consumer protection functions; Consumer protection divisions.
- Sec. 2008. Prohibition on charter conversions while under regulatory sanction.

#### TITLE III—ANTI-FRAUD PROVISIONS

- Sec. 3001. Authority to impose civil penalties in cease and desist proceedings.
- Sec. 3002. Formerly associated persons.
- Sec. 3003. Collateral bars.
- Sec. 3004. Unlawful margin lending.
- Sec. 3005. Nationwide service of process.
- Sec. 3006. Reauthorization of the Financial Crimes Enforcement Network.
- Sec. 3007. Fair fund improvements.

#### TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

- Sec. 4001. Short title.

##### Subtitle A—Amendments to the Commodity Exchange Act

- Sec. 4100. Definitions.
- Sec. 4101. Swap repositories.
- Sec. 4102. Margin for swaps between swaps dealers and major swap participants.
- Sec. 4103. Segregation of assets held as collateral in swap transactions.

##### Subtitle B—Amendments to the Securities Exchange Act of 1934

- Sec. 4201. Definitions.
- Sec. 4202. Swap repositories.
- Sec. 4203. Margin requirements.
- Sec. 4204. Segregation of assets held as collateral in swap transactions.

##### Subtitle C—Common Provisions

- Sec. 4301. Report to the congress.
- Sec. 4302. Capital requirements.
- Sec. 4303. Centralized clearing.
- Sec. 4304. Definitions.

#### TITLE V—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS

- Sec. 5001. Short title.
- Sec. 5002. Shareholder vote on executive compensation.
- Sec. 5003. Compensation committee independence.

#### TITLE VI—CREDIT RATING AGENCIES

- Sec. 6001. Changes to designation.
- Sec. 6002. Removal of statutory references to credit ratings.



1           “(1) in which the debtor has its principal place  
2           of business in the United States, principal assets in  
3           the United States, or in which there is pending a  
4           case under title 11 concerning the debtor’s affiliate  
5           or subsidiary, if a Federal Reserve Bank is located  
6           in that district;

7           “(2) if venue does not exist under paragraph  
8           (1), in which there is a Federal Reserve Bank and  
9           in a Federal Reserve district in which the debtor has  
10          its principal place of business in the United States,  
11          principal assets in the United States, or in which  
12          there is pending a case under title 11 concerning the  
13          debtor’s affiliate or subsidiary; or

14          “(3) if venue does not exist under paragraph  
15          (1) or (2), in which there is a Federal Reserve Bank  
16          and in a Federal circuit adjacent to the Federal cir-  
17          cuit in which the debtor has its principal place of  
18          business or principal assets in the United States.”,  
19          and

20          (3) by amending the table of sections of chapter  
21          87 of such title to insert after the item relating to  
22          section 1408 the following:

“1409A. Venue of cases involving non-bank financial institutions.”.

1 **SEC. 1003. AMENDMENTS TO TITLE 11 OF THE UNITED**  
2 **STATES CODE.**

3 (a) DEFINITIONS.—Section 101 of title 11, United  
4 States Code, is amended—

5 (1) by inserting after paragraph (26) the fol-  
6 lowing:

7 “(26A) The term ‘functional regulator’ means  
8 the Federal regulatory agency with the primary Fed-  
9 eral regulatory authority over the debtor, such as an  
10 agency listed in section 509 of the Gramm-Leach-  
11 Bliley Act.”,

12 (2) by redesignating paragraphs (38A) and  
13 (38B) as paragraphs (38B) and (38C), respectively,

14 (3) by inserting after paragraph (38) the fol-  
15 lowing:

16 “(38A) the term ‘Market Stability and Capital  
17 Adequacy Board’ means the entity established in  
18 section 1006 of the No More Bailouts Act of 2009.”,  
19 and

20 (4) by inserting after paragraph (40) the fol-  
21 lowing:

22 “(40A) The term ‘non-bank financial institu-  
23 tion’ means an institution the business of which is  
24 engaging in financial activities that is not an insured  
25 depository institution.”.

1 (b) APPLICABILITY OF CHAPTERS.—Section 103 of  
2 title 11, United States Code, is amended—

3 (1) in subsection (a) by striking “13” and in-  
4 serting “13, and 14”,

5 (2) by redesignating subsection (k) as sub-  
6 section (l), and

7 (3) by inserting after subsection (j) the fol-  
8 lowing:

9 “(k) Chapter 14 applies only in a case under such  
10 chapter.”.

11 (c) WHO MAY BE A DEBTOR.—Section 109 of title  
12 11, United States Code, is amended—

13 (1) in subsection (b)—

14 (A) in paragraph (2) by striking “or” at  
15 the end,

16 (B) in paragraph (3) by striking the period  
17 at the end and insert and inserting “; or”, and

18 (C) by adding at the end the following:

19 “(4) a non-bank financial institution that has  
20 not been a debtor under chapter 14 of this title.”,

21 (2) in subsection (d) by striking “or commodity  
22 broker” and inserting “, commodity broker, or a  
23 non-bank financial institution”, and

24 (3) by adding at the end the following:

1       “(i) Only a non-bank financial institution may be a  
2 debtor under chapter 14 of this title.”.

3       (d) INVOLUNTARY CASES.—Section 303 of title 11,  
4 the United States Code, is amended—

5           (1) in subsection (a) by striking “or 11” and  
6 inserting “, 11, or 14”, and

7           (2) in subsection (b) by striking “or 11” and  
8 inserting “, 11, or 14”.

9       (e) OBTAINING CREDIT.—Section 364 of title 11,  
10 United States Code, is amended by adding at the end the  
11 following:

12       “(g) Notwithstanding any other provision of this sec-  
13 tion, the trustee may not, and the court may not authorize  
14 the trustee to, obtain credit, if the source of that credit  
15 either directly or indirectly is the United States.”.

16       (f) CHAPTER 14.—Title 11, United States Code, is  
17 amended—

18           (1) by inserting the following after chapter 13:

19       **“CHAPTER 14—ADJUSTMENT TO THE**  
20       **DEBTS OF A NON-BANK FINANCIAL IN-**  
21       **STITUTION**

“1401. Inapplicability of other sections.

“1402. Applicability of chapter 11 to cases under this chapter.

“1403. Prepetition consultation.

“1404. Appointment of trustee.

“1405. Right to be heard.

“1406. Right to communicate.

“1407. Exemption with respect to certain contracts or agreements.

“1408. Conversion or dismissal.

1 **“§ 1401. Inapplicability of other sections**

2 “Except as provided in section 1407, sections  
3 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g),  
4 555, 556, 559, 560, and 561 do not apply in a case under  
5 this chapter.

6 **“§ 1402. Applicability of chapter 11 to cases under**  
7 **this chapter**

8 “With the exception of sections 1104(d), 1109,  
9 1112(a), 1115, and 1116, subchapters I, II, and III of  
10 chapter 11 apply in a case under this chapter.

11 **“§ 1403. Prepetition consultation**

12 “(a) Subject to subsection (b)—

13 “(1) a non-bank financial institution may not  
14 be a debtor under this chapter unless that institu-  
15 tion has, at least 10 days prior to the date of the  
16 filing of the petition by such institution, taken part  
17 in the consultation described in subsection (c); and

18 “(2) a creditor may not commence an involun-  
19 tary case under this chapter unless, at least 10 days  
20 prior to the date of the filing of the petition by such  
21 creditor, the creditor notifies the non-bank financial  
22 institution, the functional regulator, and the Market  
23 Stability and Capital Adequacy Board of its intent  
24 to file a petition and requests a consultation as de-  
25 scribed in subsection (c).

1       “(b) If the non-bank financial institution, the func-  
2 tional regulator, and the Market Stability and Capital  
3 Adequacy Board, in consultation with any agency charged  
4 with administering a nonbankruptcy insolvency regime for  
5 any component of the debtor, certify that the immediate  
6 filing of a petition under section 301 or 303 is necessary,  
7 or that an immediate filing would be in the interests of  
8 justice, a petition may be filed notwithstanding subsection  
9 (a).

10       “(c) The non-bank financial institution, the func-  
11 tional regulator, the Market Stability and Capital Ade-  
12 quacy Board, and any agency charged with administering  
13 a nonbankruptcy insolvency regime for any component of  
14 the debtor shall engage in prepetition consultation in order  
15 to attempt to avoid the need for the non-bank financial  
16 institution’s liquidation or reorganization in bankruptcy,  
17 to make any liquidation or reorganization of the non-bank  
18 financial institution under this title more orderly, or to  
19 aid in the nonbankruptcy resolution of any of the non-  
20 bank financial institution’s components under its non-  
21 bankruptcy insolvency regime. Such consultation shall spe-  
22 cifically include the attempt to negotiate forbearance of  
23 claims between the non-bank financial institution and its  
24 creditors if such forbearance would likely help to avoid the  
25 commencement of a case under this title, would make any

1 liquidation or reorganization under this title more orderly,  
2 or would aid in the nonbankruptcy resolution of any of  
3 the non-bank financial institution's components under its  
4 nonbankruptcy insolvency regime. Additionally, the con-  
5 sultation shall consider whether, if a petition is filed under  
6 section 301 or 303, the debtor should file a motion for  
7 an exemption authorized by section 1407.

8       “(d) The court may allow the consultation process to  
9 continue for 30 days after the petition, upon motion by  
10 the debtor or a creditor. Any post-petition consultation  
11 proceedings authorized should be facilitated by the court's  
12 mediation services, under seal, and exclude ex parte com-  
13 munications.

14       “(e) The Market Stability and Capital Adequacy  
15 Board and the functional regulator shall publish and  
16 transmit to Congress a report documenting the course of  
17 any consultation. Such report shall be published and  
18 transmitted to Congress within 30 days of the conclusion  
19 of the consultation.

20       “(f) Nothing in this section shall be interpreted to  
21 set aside any of the limitations on the use of Federal funds  
22 set forth in the No More Bailouts Act of 2009 or the  
23 amendments made by such Act.

1 **“§ 1404. Appointment of trustee**

2 “In applying section 1104 to a case under this chap-  
3 ter, if the court orders the appointment of a trustee or  
4 an examiner, if the trustee or an examiner dies or resigns  
5 during the case or is removed under section 324, or if a  
6 trustee fails to qualify under section 322, the functional  
7 regulator, in consultation with the Market Stability and  
8 Capital Adequacy Board, shall submit a list of five disin-  
9 terested persons that are qualified and willing to serve as  
10 trustees in the case and the United States trustee shall  
11 appoint, subject to the court’s approval, one of such per-  
12 sons to serve as trustee in the case.

13 **“§ 1405. Right to be heard**

14 “(a) The functional regulator, the Market Stability  
15 and Capital Adequacy Board, the Federal Reserve, the  
16 Department of the Treasury, the Securities and Exchange  
17 Commission, and any domestic or foreign agency charged  
18 with administering a nonbankruptcy insolvency regime for  
19 any component of the debtor may raise and may appear  
20 and be heard on any issue in a case under this chapter,  
21 but may not appeal from any judgment, order, or decree  
22 entered in the case.

23 “(b) A party in interest, including the debtor, the  
24 trustee, a creditors’ committee, an equity security holders’  
25 committee, a creditor, an equity security holder, or any

1 indenture trustee may raise, and may appear and be heard  
2 on, any issue in a case under this chapter.

3 **“§ 1406. Right to communicate**

4 “The court is entitled to communicate directly with,  
5 or to request information or assistance directly from, the  
6 functional regulator, the Market Stability and Capital  
7 Adequacy Board, the Board of Governors of the Federal  
8 Reserve System, the Department of the Treasury, or any  
9 agency charged with administering a nonbankruptcy insol-  
10 vency regime for any component of the debtor, subject to  
11 the rights of a party in interest to notice and participation.

12 **“§ 1407. Exemption with respect to certain contracts  
13 or agreements**

14 “(a) Subject to subsection (b)—

15 “(1) upon motion of the debtor, consented to by  
16 the Market Stability and Capital Adequacy Board—

17 “(A) the debtor and the estate shall be ex-  
18 empt from the operation of sections 362(b)(6),  
19 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g),  
20 555, 556, 559, 560, and 561;

21 “(B) if the Market Stability and Capital  
22 Adequacy Board consents to the filing of such  
23 motion by the debtor, the Board shall inform  
24 the court of its reasons for consenting; and

1           “(C) the debtor may limit its motion, or  
2           the board may limit its consent, to exempt the  
3           debtor and the estate from the operation of sec-  
4           tion 362(b)(6), 362(b)(7), 362(b)(17), 546(e),  
5           546(f), 546(g), 555, 556, 559, 560, or 561, or  
6           any combination thereof; and

7           “(2) if the Market Stability and Capital Ade-  
8           quacy Board does not consent to the filing of a mo-  
9           tion by the debtor under paragraph (1), the debtor  
10          may file a motion to exempt the debtor and the es-  
11          tate from the operation of sections 362(b)(6),  
12          362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555,  
13          556, 559, 560, and 561, or any combination thereof.

14          “(b) The court shall commence a hearing on a motion  
15          under subsection (a) not later than 5 days after the filing  
16          of the motion to determine whether to maintain, termi-  
17          nate, annul, modify, or condition the exemption under sub-  
18          section (a)(1) or, in the case of a motion under subsection  
19          (a)(2), grant the exemption. The court shall request the  
20          filing or briefs by the functional regulator and the Market  
21          Stability and Capital Adequacy Board. The court shall de-  
22          cide the motion not later than 5 days after commencing  
23          such hearing unless—

24                 “(1) the parties in interest consent to a exten-  
25                 sion for a specific period of time; or

1           “(2) except with respect to an exemption from  
2           the operation of section 559, the court sua sponte  
3           extends for 5 additional days the period for decision  
4           if such extension would be in the interests of justice  
5           or is required by compelling circumstances.

6           “(c) The court shall maintain, terminate, annul, mod-  
7           ify, or condition the exemption under subsection (a)(1),  
8           or, in the case of a motion under subsection (a)(2), grant  
9           the exemption only upon showing of good cause. In deter-  
10          mining whether good cause has been shown, the court  
11          shall balance the interests of both debtor and creditors  
12          while attempting to preserve the debtor’s assets for repay-  
13          ment and reorganization of the debtors obligations, or to  
14          provide for a more orderly liquidation.

15          “(d) For purposes of timing under section 562 of this  
16          title, if a motion is filed under subsection (a)(1) or if a  
17          motion is granted under subsection (a)(2), the date or  
18          dates of liquidation, termination, or acceleration shall be  
19          measured from the earlier of—

20                 “(1) the actual date or dates of liquidation, ter-  
21                 mination, or acceleration; or

22                 “(2) the date on which a forward contract mer-  
23                 chant, stockbroker, financial institution, securities  
24                 clearing agency, repo participant, financial partici-  
25                 pant, master netting agreement participant, or swap

1 participant files a notice with the court that it would  
2 have liquidated, terminated, or accelerated a con-  
3 tract or agreement covered by section 562 of this  
4 title had a stay under this section not been in place.

5 **“§ 1408. Conversion or dismissal**

6 “In applying section 1112 to a case under this chap-  
7 ter, the debtor may convert a case under this chapter to  
8 a case under chapter 7 of this title if the debtor may be  
9 a debtor under such chapter unless the debtor is not a  
10 debtor in possession.”, and

11 (2) by amending the table of chapters of such  
12 title by adding at the end the following:

“14. Adjustment to the Debts of a Non-Bank Financial Institution ..... 1401”.

13 **SEC. 1004. EFFECTIVE DATE; APPLICATION OF AMEND-**  
14 **MENTS.**

15 (a) **EFFECTIVE DATE.**—Except as provided in sub-  
16 section (b), this title and the amendments made by this  
17 title shall take effect on the date of the enactment of this  
18 title.

19 (b) **APPLICATION OF AMENDMENTS.**—The amend-  
20 ments made by this title shall apply only with respect to  
21 cases commenced under title 11 of the United States Code  
22 on or after the date of the enactment of this title.

1 **SEC. 1005. REFORMS OF SECTION 13 EMERGENCY POWERS.**

2 (a) RESTRICTIONS ON EMERGENCY POWERS.—The  
3 third undesignated paragraph of section 13 of the Federal  
4 Reserve Act is amended—

5 (1) by striking “In unusual and exigent” and  
6 inserting the following:

7 “(3) EMERGENCY AUTHORITY.—

8 “(A) IN GENERAL.—In unusual and exi-  
9 gent”; and

10 (2) by adding at the end the following new sub-  
11 paragraph:

12 “(B) REQUIREMENT FOR BROAD AVAIL-  
13 ABILITY OF DISCOUNTS.—Subject to the limita-  
14 tions provided under subparagraph (A), any au-  
15 thorization made pursuant to the authority pro-  
16 vided under subparagraph (A) shall require dis-  
17 counts to be made broadly available to individ-  
18 uals, partnerships, and corporations within the  
19 market sector for which such authorization is  
20 being made.

21 “(C) TRANSPARENCY AND OVERSIGHT.—

22 “(i) SECRETARY OF THE TREASURY  
23 APPROVAL REQUIRED; NOTICE TO THE  
24 CONGRESS.—No authorization may be  
25 made pursuant to the authority provided  
26 under subparagraph (A) unless—

1                   “(I) such authorization is first  
2                   approved by the Secretary of the  
3                   Treasury; and

4                   “(II) the Secretary of the Treas-  
5                   ury issues a notice to the Congress  
6                   detailing what authorization the Sec-  
7                   retary has approved.

8                   “(ii) PROGRAMS MOVED ON-BUDGET  
9                   AFTER 90 DAYS.—On and after the date  
10                  that is 90 days after the date on which any  
11                  authorization is made pursuant to the au-  
12                  thority provided under subparagraph (A),  
13                  all receipts and disbursements resulting  
14                  from such authorization shall be counted  
15                  as new budget authority, outlays, receipts,  
16                  or deficit or surplus for purposes of—

17                  “(I) the budget of the United  
18                  States Government as submitted by  
19                  the President;

20                  “(II) the congressional budget;  
21                  and

22                  “(III) the Balanced Budget and  
23                  Emergency Deficit Control Act of  
24                  1985.

1           “(D) JOINT RESOLUTION OF DIS-  
2 APPROVAL.—

3           “(i) IN GENERAL.—With respect to an  
4 authorization made pursuant to the au-  
5 thority provided under subparagraph (A),  
6 if, during the 90-day period beginning on  
7 the date the Congress receives a notice de-  
8 scribed under subparagraph (C)(i)(II) with  
9 respect to such authorization, there is en-  
10 acted into law a joint resolution dis-  
11 approving such authorization, any action  
12 taken under such authorization must be  
13 discontinued and unwound not later than  
14 the end of the 180-day period beginning on  
15 the date that such authorization was made.

16           “(ii) CONTENTS OF JOINT RESOLU-  
17 TION.—For the purpose of this paragraph,  
18 the term ‘joint resolution’ means only a  
19 joint resolution—

20           “(I) that is introduced not later  
21 than 3 calendar days after the date on  
22 which the notice referred to in clause  
23 (i) is received by the Congress;

24           “(II) which does not have a pre-  
25 amble;

1           “(III) the title of which is as fol-  
2           lows: ‘Joint resolution relating to the  
3           disapproval of authorization under the  
4           emergency powers of the Federal Re-  
5           serve Act’; and

6           “(IV) the matter after the resolv-  
7           ing clause of which is as follows:  
8           ‘That Congress disapproves the au-  
9           thorization contained in the notice  
10          submitted to the Congress by the Sec-  
11          retary of the Treasury on the date of  
12          \_\_\_\_\_ relating to  
13          \_\_\_\_\_.’ (The blank spaces  
14          being appropriately filled in.).

15           “(E) FAST TRACK CONSIDERATION IN  
16          HOUSE OF REPRESENTATIVES.—

17           “(i) RECONVENING.—Upon receipt of  
18          a notice referred to in subparagraph  
19          (D)(i), the Speaker, if the House would  
20          otherwise be adjourned, shall notify the  
21          Members of the House that, pursuant to  
22          this section, the House shall convene not  
23          later than the second calendar day after  
24          receipt of such report.

1                   “(ii) REPORTING AND DISCHARGE.—  
2                   Any committee of the House of Represent-  
3                   atives to which a joint resolution is re-  
4                   ferred shall report it to the House not later  
5                   than 5 calendar days after the date of re-  
6                   ceipt of the notice referred to in subpara-  
7                   graph (D)(i). If a committee fails to report  
8                   the joint resolution within that period, the  
9                   committee shall be discharged from further  
10                  consideration of the joint resolution and  
11                  the joint resolution shall be referred to the  
12                  appropriate calendar.

13                  “(iii) PROCEEDING TO CONSIDER-  
14                  ATION.—After each committee authorized  
15                  to consider a joint resolution reports it to  
16                  the House or has been discharged from its  
17                  consideration, it shall be in order, not later  
18                  than the sixth day after Congress receives  
19                  the notice referred to in subparagraph  
20                  (D)(i), to move to proceed to consider the  
21                  joint resolution in the House. All points of  
22                  order against the motion are waived. Such  
23                  a motion shall not be in order after the  
24                  House has disposed of a motion to proceed  
25                  on the joint resolution. The previous ques-

1           tion shall be considered as ordered on the  
2           motion to its adoption without intervening  
3           motion. The motion shall not be debatable.  
4           A motion to reconsider the vote by which  
5           the motion is disposed of shall not be in  
6           order.

7                   “(iv) CONSIDERATION.—The joint res-  
8           olution shall be considered as read. All  
9           points of order against the joint resolution  
10          and against its consideration are waived.  
11          The previous question shall be considered  
12          as ordered on the joint resolution to its  
13          passage without intervening motion except  
14          two hours of debate equally divided and  
15          controlled by the proponent and an oppo-  
16          nent. A motion to reconsider the vote on  
17          passage of the joint resolution shall not be  
18          in order.

19                   “(F) FAST TRACK CONSIDERATION IN SEN-  
20          ATE.—

21                   “(i) RECONVENING.—Upon receipt of  
22          a notice referred to in subparagraph  
23          (D)(i), if the Senate has adjourned or re-  
24          cessed for more than 2 days, the majority  
25          leader of the Senate, after consultation

1 with the minority leader of the Senate,  
2 shall notify the Members of the Senate  
3 that, pursuant to this section, the Senate  
4 shall convene not later than the second cal-  
5 endar day after receipt of such message.

6 “(ii) PLACEMENT ON CALENDAR.—  
7 Upon introduction in the Senate, the joint  
8 resolution shall be placed immediately on  
9 the calendar.

10 “(iii) FLOOR CONSIDERATION.—

11 “(I) IN GENERAL.—Notwith-  
12 standing Rule XXII of the Standing  
13 Rules of the Senate, it is in order at  
14 any time during the period beginning  
15 on the 4th day after the date on  
16 which Congress receives a notice re-  
17 ferred to in subparagraph (D)(i) and  
18 ending on the 6th day after the date  
19 on which Congress receives a notice  
20 referred to in subparagraph (D)(i)  
21 (even though a previous motion to the  
22 same effect has been disagreed to) to  
23 move to proceed to the consideration  
24 of the joint resolution, and all points  
25 of order against the joint resolution

1 (and against consideration of the joint  
2 resolution) are waived. The motion to  
3 proceed is not debatable. The motion  
4 is not subject to a motion to postpone.  
5 A motion to reconsider the vote by  
6 which the motion is agreed to or dis-  
7 agreed to shall not be in order. If a  
8 motion to proceed to the consideration  
9 of the resolution is agreed to, the joint  
10 resolution shall remain the unfinished  
11 business until disposed of.

12 “(II) DEBATE.—Debate on the  
13 joint resolution, and on all debatable  
14 motions and appeals in connection  
15 therewith, shall be limited to not more  
16 than 10 hours, which shall be divided  
17 equally between the majority and mi-  
18 nority leaders or their designees. A  
19 motion further to limit debate is in  
20 order and not debatable. An amend-  
21 ment to, or a motion to postpone, or  
22 a motion to proceed to the consider-  
23 ation of other business, or a motion to  
24 recommit the joint resolution is not in  
25 order.

1                   “(III) VOTE ON PASSAGE.—The  
2                   vote on passage shall occur imme-  
3                   diately following the conclusion of the  
4                   debate on a joint resolution, and a  
5                   single quorum call at the conclusion of  
6                   the debate if requested in accordance  
7                   with the rules of the Senate.

8                   “(IV) RULINGS OF THE CHAIR  
9                   ON PROCEDURE.—Appeals from the  
10                  decisions of the Chair relating to the  
11                  application of the rules of the Senate,  
12                  as the case may be, to the procedure  
13                  relating to a joint resolution shall be  
14                  decided without debate.

15                  “(G) RULES RELATING TO SENATE AND  
16                  HOUSE OF REPRESENTATIVES.—

17                  “(i) COORDINATION WITH ACTION BY  
18                  OTHER HOUSE.—If, before the passage by  
19                  one House of a joint resolution of that  
20                  House, that House receives from the other  
21                  House a joint resolution, then the following  
22                  procedures shall apply:

23                  “(I) The joint resolution of the  
24                  other House shall not be referred to a  
25                  committee.

1                   “(II) With respect to a joint res-  
2                   olution of the House receiving the res-  
3                   olution—

4                   “(aa) the procedure in that  
5                   House shall be the same as if no  
6                   joint resolution had been received  
7                   from the other House; but

8                   “(bb) the vote on passage  
9                   shall be on the joint resolution of  
10                  the other House.

11                  “(ii) TREATMENT OF JOINT RESOLU-  
12                  TION OF OTHER HOUSE.—If one House  
13                  fails to introduce or consider a joint resolu-  
14                  tion under this section, the joint resolution  
15                  of the other House shall be entitled to ex-  
16                  pedited floor procedures under this section.

17                  “(iii) TREATMENT OF COMPANION  
18                  MEASURES.—If, following passage of the  
19                  joint resolution in the Senate, the Senate  
20                  then receives the companion measure from  
21                  the House of Representatives, the com-  
22                  panion measure shall not be debatable.

23                  “(iv) VETOES.—If the President ve-  
24                  toes the joint resolution, debate on a veto  
25                  message in the Senate under this section

1 shall be 1 hour equally divided between the  
2 majority and minority leaders or their des-  
3 ignees.

4 “(v) RULES OF HOUSE OF REP-  
5 RESENTATIVES AND SENATE.—This sub-  
6 paragraph and subparagraphs (D), (E),  
7 and (F) are enacted by Congress—

8 “(I) as an exercise of the rule-  
9 making power of the Senate and  
10 House of Representatives, respec-  
11 tively, and as such it is deemed a part  
12 of the rules of each House, respec-  
13 tively, but applicable only with respect  
14 to the procedure to be followed in that  
15 House in the case of a joint resolu-  
16 tion, and it supersedes other rules  
17 only to the extent that it is incon-  
18 sistent with such rules; and

19 “(II) with full recognition of the  
20 constitutional right of either House to  
21 change the rules (so far as relating to  
22 the procedure of that House) at any  
23 time, in the same manner, and to the  
24 same extent as in the case of any  
25 other rule of that House.”.

1 (b) CURRENT PROGRAMS MOVED ON-BUDGET.—Not  
2 later than 90 days after the date of the enactment of this  
3 title, all receipts and disbursements resulting from any au-  
4 thorization made before the date of the enactment of this  
5 title pursuant to the authority granted by the third undes-  
6 igned paragraph of section 13 of the Federal Reserve  
7 Act shall be counted as new budget authority, outlays, re-  
8 ceipts, or deficit or surplus for purposes of—

9 (1) the budget of the United States Govern-  
10 ment as submitted by the President;

11 (2) the congressional budget; and

12 (3) the Balanced Budget and Emergency Def-  
13 icit Control Act of 1985.

14 **SEC. 1006. ESTABLISHMENT OF MARKET STABILITY AND**  
15 **CAPITAL ADEQUACY BOARD.**

16 (a) IN GENERAL.—There is hereby established the  
17 Market Stability and Capital Adequacy Board (hereafter  
18 in this title referred to as the “Board”) as an independent  
19 establishment in the Executive Branch.

20 (b) CONSTITUTION OF BOARD.—Subject to para-  
21 graph (4), the Board shall have 12 members as follows:

22 (1) PUBLIC MEMBERS.—The following shall be  
23 members of the Board—

24 (A) The Secretary of the Treasury.

1 (B) The Chairman of the Board of Gov-  
2 ernors of the Federal Reserve System.

3 (C) The Chairman of the Securities and  
4 Exchange Commission.

5 (D) The Chairperson of the Federal De-  
6 posit Insurance Corporation.

7 (E) The Chairman of the Commodity Fu-  
8 tures Trading Commission.

9 (F) The Comptroller of the Currency.

10 (G) The Director of the Office of Thrift  
11 Supervision.

12 (2) PRIVATE MEMBERS.—The Board shall also  
13 have 5 members appointed by the President, by and  
14 with the advice and consent of the Senate, who shall  
15 be appointed from among individuals who—

16 (A) are specially qualified to serve on the  
17 Board by virtue of their education, training,  
18 and experience; and

19 (B) are not officers or employees of the  
20 Federal Government, including the Board of  
21 Governors of the Federal Reserve System.

22 (3) CHAIRPERSON.—The Secretary of the  
23 Treasury shall serve as the Chairperson of the  
24 Board.

1           (4) DIRECTOR OF FHFA AS INTERIM MEM-  
2           BER.—Until such time as the charters of the Fed-  
3           eral National Mortgage Association and the Federal  
4           Home Loan Mortgage Corporation are both repealed  
5           pursuant to section 7006(d), the Board shall consist  
6           of 13 members with the Director of the Federal  
7           Housing Finance Agency serving as a public member  
8           under paragraph (1).

9           (c) APPOINTMENTS.—

10           (1) TERM.—

11           (A) IN GENERAL.—Each appointed mem-  
12           ber shall be appointed for a term of 5 years.

13           (B) STAGGERED TERMS.—Of the members  
14           of the Board first appointed under subsection  
15           (b)(2), as designated by the President at the  
16           time of appointment—

17           (i) 1 shall be appointed for a term of  
18           5 years;

19           (ii) 1 shall be appointed for a term of  
20           4 years;

21           (iii) 1 shall be appointed for a term of  
22           3 years;

23           (iv) 1 shall be appointed for a term of  
24           2 years; and

1 (v) 1 shall be appointed for a term of  
2 1 year.

3 (2) INTERIM APPOINTMENTS.—Any member ap-  
4 pointed to fill a vacancy occurring before the expira-  
5 tion of the term for which such member's prede-  
6 cessor was appointed shall be appointed only for the  
7 remainder of such term.

8 (3) CONTINUATION OF SERVICE.—Each ap-  
9 pointed member may continue to serve after the ex-  
10 piration of the term of office to which such member  
11 was appointed until a successor has been appointed  
12 and qualified.

13 (4) REAPPOINTMENT TO A 2ND TERM.—Each  
14 member appointed to a term on the Board under  
15 subsection (b)(2), including an interim appointment  
16 under paragraph (2), may be reappointed by the  
17 President to serve 1 additional term.

18 (d) VACANCY.—

19 (1) IN GENERAL.—Any vacancy on the Board  
20 shall be filled in the manner in which the original  
21 appointment was made.

22 (2) ACTING OFFICIALS MAY SERVE.—In the  
23 event of a vacancy in any position listed in sub-  
24 section (b)(1) and pending the appointment of a suc-  
25 cessor, or during the absence or disability of the in-

1       dividual serving in such position, any acting official  
2       in such position shall be a member of the Board  
3       while such vacancy, absence or disability continues  
4       and the acting official continues acting in such posi-  
5       tion.

6       (e) INELIGIBILITY FOR OTHER OFFICES.—

7           (1) POSTSERVICE RESTRICTION.—No member  
8       of the Board may hold any office, position, or em-  
9       ployment in any financial institution or affiliate of a  
10      financial institution during—

11           (A) the time such member is in office; and

12           (B) the 2-year period beginning on the  
13      date such member ceases to serve on the Board.

14      (2) CERTIFICATION.—Upon taking office, each  
15      member of the Board shall certify under oath that  
16      such member has complied with this subsection and  
17      such certification shall be filed with the secretary of  
18      the Board.

19      (f) QUALIFICATIONS; INITIAL MEETING.—

20           (1) POLITICAL PARTY AFFILIATION.—Not more  
21      than 3 members of the Board appointed under sub-  
22      section (b)(2) shall be from the same political party.

23           (2) QUALIFICATIONS GENERALLY.—It is the  
24      sense of the Congress that individuals appointed to  
25      the Commission should be prominent United States

1 citizens, with national recognition and significant  
2 depth of experience commensurate with the duties of  
3 the Board.

4 (3) SPECIFIC APPOINTMENT QUALIFICATIONS  
5 FOR CERTAIN APPOINTED MEMBERS.—

6 (A) STATE BANK.—Of the members ap-  
7 pointed to the Board under subsection (b)(2),  
8 at least 1 shall be appointed from among indi-  
9 viduals who have had experience as a State  
10 bank supervisor or senior management execu-  
11 tive with a State depository institution.

12 (B) INSURANCE COMMISSIONER.—Of the  
13 members appointed to the Board under sub-  
14 section (b)(2), at least 1 shall be appointed  
15 from among individuals who have served as a  
16 State insurance commissioner or supervisor.

17 (4) INITIAL MEETING.—The Board shall meet  
18 and begin the operations of the Board as soon as  
19 practicable but not later than the end of the 180-day  
20 period beginning the date of the enactment of this  
21 title.

22 (g) QUORUM.—Four of the members of the Board  
23 designated under subsection (b)(1) and 3 members of the  
24 Board appointed under (b)(2) shall constitute a quorum.

1 (h) QUARTERLY MEETINGS.—The Board shall meet  
2 upon the call of the chairperson or a majority of the mem-  
3 bers at least once in each calendar quarter

4 **SEC. 1007. FUNCTIONS OF BOARD.**

5 (a) PRINCIPAL FUNCTIONS.—The principal functions  
6 of the Board shall be to—

7 (1) monitor the interactions of various sectors  
8 of the financial system; and

9 (2) identify risks that could endanger the sta-  
10 bility and soundness of the system.

11 (b) SPECIFIC REVIEW FUNCTIONS INCLUDED.—In  
12 carrying out the functions described in subsection (a), the  
13 Board shall—

14 (1) review financial industry data collected from  
15 the appropriate functional regulators;

16 (2) review insurance industry data, in coordina-  
17 tion with State insurance supervisors, for all lines of  
18 insurance other than health insurance;

19 (3) monitor government policies and initiatives;

20 (4) review risk management practices within fi-  
21 nancial regulatory agencies;

22 (5) review capital standards set by the appro-  
23 priate functional regulators and make recommenda-  
24 tions to ensure capital and leverage ratios match  
25 risks regulated entities are taking on;

1           (6) review transparency and regulatory under-  
2           standing of risk exposures in the over-the-counter  
3           derivatives markets and make recommendations re-  
4           garding the appropriate clearing of trades in those  
5           markets through central counterparties;

6           (7) make recommendations regarding any gov-  
7           ernment or industry policies and practices that are  
8           exacerbating systemic risk; and

9           (8) take such other actions and make such  
10          other recommendations as the Board, in the discre-  
11          tion of the Board, determines to be appropriate.

12          (c) REPORTS TO FEDERAL FUNCTIONAL REGU-  
13          LATORS AND THE CONGRESS.—The Board shall periodi-  
14          cally make a report to the Congress and the functional  
15          regulators on the findings, conclusions, and recommenda-  
16          tions of the Board in a manner and within a time frame  
17          that allows the Congress and such regulators to act to con-  
18          tain risks posed by specific firms, industry practices, ac-  
19          tivities and interactions of entities under different regu-  
20          latory regimes, or government policies.

21          (d) TESTIMONY TO CONGRESS.—Not later than Feb-  
22          ruary 20 and July 20 of each year, the Chairperson of  
23          the Board shall testify to the Congress at semiannual  
24          hearings before the Committee on Banking, Housing, and  
25          Urban Affairs of the Senate and the Committee on Finan-

1 cial Services of the House of Representatives, about the  
2 state of systemic risk in the financial services industry and  
3 proposals or recommendations by the Board to address  
4 any undue risk.

5 (e) RULE OF CONSTRUCTION.—No provision of this  
6 title shall be construed as giving the Board any enforce-  
7 ment authority over any financial institution.

8 **SEC. 1008. POWERS OF BOARD.**

9 (a) CONTRACTING.—The Board may, to such extent  
10 and in such amounts as are provided in appropriation  
11 Acts, enter into contracts to enable the Board to discharge  
12 its duties under this title.

13 (b) INFORMATION FROM FEDERAL AGENCIES.—

14 (1) IN GENERAL.—The Board may secure di-  
15 rectly from any executive department, agency, or  
16 independent establishment, or any other instrumen-  
17 tality of the United States information and rec-  
18 ommendations for the purposes of this title.

19 (2) DELIVERY OF REQUESTED INFORMATION.—  
20 Each executive department, agency, or independent  
21 establishment, or any other instrumentality of the  
22 United States shall, to the extent authorized by law,  
23 furnish any information and recommendations re-  
24 quested under paragraph (1) directly to the Board,

1       upon request made by the chairperson or any mem-  
2       ber designated by a majority of the Commission.

3               (3) RECEIPT, HANDLING, STORAGE, AND DIS-  
4       SEMINATION.—Information shall only be received,  
5       handled, stored, and disseminated by members of  
6       the Board and its staff consistent with all applicable  
7       statutes, regulations, and Executive orders.

8       (c) ASSISTANCE FROM FEDERAL AGENCIES.—

9               (1) GENERAL SERVICES ADMINISTRATION.—  
10       The Administrator of General Services shall provide  
11       to the Board on a reimbursable basis administrative  
12       support and other services for the performance of  
13       the Commission's functions.

14              (2) OTHER DEPARTMENTS AND AGENCIES.—In  
15       addition to the assistance prescribed in paragraph  
16       (1), departments and agencies of the United States  
17       may provide to the Commission such services, funds,  
18       facilities, staff, and other support services as they  
19       may determine advisable and as may be authorized  
20       by law, including agencies represented on the Board  
21       under section 1006(b)(1).

22       **SEC. 1009. RESPONSIBILITIES OF FEDERAL FUNCTIONAL**  
23                               **REGULATORS.**

24       (a) FEDERAL FUNCTIONAL REGULATOR DEFINED.—

25       For purposes of this title, the term “Federal functional

1 regulator” has the same meaning as in section 509(2) of  
2 the Gramm-Leach-Bliley Act, except that such term in-  
3 cludes the Commodity Futures Trading Commission.

4 (b) ASSESSMENTS AND REVIEWS.—In order to ad-  
5 dress current regulatory gaps, each Federal functional  
6 regulator shall, before each quarterly meeting of the  
7 Board—

8 (1) assess the effects on macroeconomic sta-  
9 bility of the activities of financial institutions that  
10 are subject to the jurisdiction of such agency;

11 (2) review how such financial institutions inter-  
12 act with entities outside the jurisdiction of such  
13 agency; and

14 (3) report the results of such assessment and  
15 review to the Board, together with such rec-  
16 ommendations for administrative action as the agen-  
17 cy determines to be appropriate.

18 **SEC. 1010. STAFF OF BOARD.**

19 (a) APPOINTMENT AND COMPENSATION.—The chair-  
20 person, in accordance with rules agreed upon by the Board  
21 and title 5, United States Code, may appoint and fix the  
22 compensation of a staff director and such other personnel  
23 as may be necessary to enable the Board to carry out its  
24 functions.

1 (b) **DETAILEES.**—Any Federal Government employee  
2 may be detailed to the Board and such detailee shall retain  
3 the rights, status, and privileges of his or her regular em-  
4 ployment without interruption.

5 (c) **CONSULTANT SERVICES.**—The Board may pro-  
6 cure the services of experts and consultants in accordance  
7 with section 3109 of title 5, United States Code, but at  
8 rates not to exceed the daily rate paid a person occupying  
9 a position at level IV of the Executive Schedule under sec-  
10 tion 5315 of title 5, United States Code.

11 **SEC. 1011. COMPENSATION AND TRAVEL EXPENSES.**

12 (a) **COMPENSATION.**—Each member of the Board ap-  
13 pointed under section 1006(b)(2) may be compensated at  
14 not to exceed the daily equivalent of the annual rate of  
15 basic pay in effect for a position at level IV of the Execu-  
16 tive Schedule under section 5315 of title 5, United States  
17 Code, for each day during which that member is engaged  
18 in the actual performance of the duties of the Board.

19 (b) **TRAVEL EXPENSES.**—While away from their  
20 homes or regular places of business in the performance  
21 of services for the Board, members of the Board shall be  
22 allowed travel expenses, including per diem in lieu of sub-  
23 sistence, in the same manner as persons employed inter-  
24 mittently in the Government service are allowed expenses  
25 under section 5703(b) of title 5, United States Code.

1 **TITLE II—FINANCIAL INSTITU-**  
2 **TIONS CONSUMER PROTEC-**  
3 **TION AND EXAMINATION**  
4 **COUNCIL**

5 **SEC. 2001. SHORT TITLE.**

6 This title may be cited as the “Financial Institutions  
7 Consumer Protection and Examination Council Act of  
8 2009”.

9 **SEC. 2002. DEFINITIONS.**

10 (a) **RENAMING COUNCIL.**—The Federal Financial In-  
11 stitutions Examination Council Act of 1978 (12 U.S.C.  
12 3301 et seq.) is amended by striking “Financial Institu-  
13 tions Examination Council” each place it appears, except  
14 for in section 1001 of such Act, and inserting “Financial  
15 Institutions Consumer Protection and Examination Coun-  
16 cil”.

17 (b) **DEFINITIONS RELATING TO CONSUMER PROTEC-**  
18 **TION.**—Section 1003 of such Act (12 U.S.C. 3302) is  
19 amended—

20 (1) in paragraph (2), by striking “and”; and

21 (2) by adding at the end the following new  
22 paragraphs:

23 “(4) the term ‘enumerated consumer laws’  
24 means—

1           “(A) the Alternative Mortgage Transaction  
2 Parity Act (12 U.S.C. 3801 et seq.);

3           “(B) the Community Reinvestment Act;

4           “(C) the Consumer Leasing Act;

5           “(D) the Electronic Funds Transfer Act  
6 (15 U.S.C. 1693 et seq.);

7           “(E) the Equal Credit Opportunity Act  
8 (15 U.S.C. 1691 et seq.);

9           “(F) the Fair Credit Billing Act;

10          “(G) the Fair Credit Reporting Act (15  
11 U.S.C. 1681 et seq.);

12          “(H) the Fair Debt Collection Practices  
13 Act (15 U.S.C. 1692 et seq.);

14          “(I) subsections (c), (d), (e), and (f) of  
15 section 43 of the Federal Deposit Insurance Act  
16 (12 U.S.C. 1831t);

17          “(J) sections 502, 503, 504, 505, 506,  
18 507, 508, and 509 of the Gramm-Leach-Bliley  
19 Act (15 U.S.C. 6802 et seq.);

20          “(K) the Home Mortgage Disclosure Act  
21 (12 U.S.C. 2801 et seq.);

22          “(L) the Real Estate Settlement Proce-  
23 dures Act (12 U.S.C. 2601 et seq.);

1           “(M) the Secure and Fair Enforcement for  
2 Mortgage Licensing Act (12 U.S.C. 5101 et  
3 seq.);

4           “(N) the Truth in Lending Act (15 U.S.C.  
5 1601 et seq.);

6           “(O) the Truth in Savings Act (12 U.S.C.  
7 4301 et seq.); and

8           “(5) the term ‘expanded Board’ means——

9           “(A) the members of the Council described  
10 under section 1004(a);

11           “(B) the Secretary of Housing and Urban  
12 Development;

13           “(C) the Chairman of the Securities and  
14 Exchange Commission;

15           “(D) the Chairman of the Commodities  
16 Futures Trading Commission;

17           “(E) the Chairman of the Federal Trade  
18 Commission;

19           “(F) the Director of the Federal Housing  
20 Finance Agency;

21           “(G) the Director of the Pension Benefit  
22 Guarantee Corporation;

23           “(H) the Secretary of the Treasury;

24           “(I) the Secretary of Defense; and

25           “(J) the Secretary of Veterans’ Affairs.”.

1 (c) DEFINITIONS RELATED TO THE STATE LIAISON  
2 COMMITTEE.—Section 1007 of such Act (12 U.S.C. 3306)  
3 is amended by inserting after “financial institutions” the  
4 following: “and one representative of the National Associa-  
5 tion of Insurance Commissioners”.

6 **SEC. 2003. FINANCIAL INSTITUTIONS CONSUMER PROTEC-**  
7 **TION AND EXAMINATION COUNCIL.**

8 (a) CONSUMER PROTECTION DUTIES.—Section 1006  
9 of the Federal Financial Institutions Examination Council  
10 Act of 1978 (12 U.S.C. 3305) is amended by adding at  
11 the end the following new subsection:

12 “(h) CONSUMER PROTECTION REGULATIONS.—

13 “(1) IN GENERAL.—The Council shall study the  
14 need for revised or new regulations for the protec-  
15 tion of consumers under the enumerated consumer  
16 laws and shall vote on suggested model regulations  
17 that the Council determines necessary for the protec-  
18 tion of consumers under the enumerated consumer  
19 laws.

20 “(2) REGULATIONS ISSUED BY COUNCIL MEM-  
21 BERS.—Not later than the end of the 1-month pe-  
22 riod beginning on the date a suggested model regula-  
23 tion is agreed to by the Council by a majority vote  
24 of the members of the Council, the members of the  
25 Council, other than the Chairman of the State Liai-

1 son Committee, shall jointly issue regulations based  
2 on such suggested model regulation, where applica-  
3 ble.

4 “(3) EXPANDED BOARD REQUIRED.—For pur-  
5 poses of any action taken pursuant to this sub-  
6 section and any reference to the members of the  
7 Council under this subsection, the Council shall con-  
8 sist of the expanded Board.

9 “(4) NO COUNCIL ENFORCEMENT POWER.—No  
10 provision of this subsection shall be construed as  
11 conferring any enforcement authority to the Council.

12 “(5) REQUIREMENTS FOR REGULATIONS PRO-  
13 POSED BY THE CHAIRMAN OF THE STATE LIAISON  
14 COMMITTEE.—

15 “(A) IN GENERAL.—The Chairman of the  
16 State Liaison Committee may not propose any  
17 suggested model regulation for the Council to  
18 vote on under this subsection unless such pro-  
19 posed suggested model regulation is accom-  
20 panied by a certification from the Chairman of  
21 the State Liaison Committee stating that more  
22 than half of the States support such proposal.

23 “(B) METHOD OF DETERMINATION.—For  
24 purposes of this paragraph, the Chairman of  
25 the State Liaison Committee shall determine

1           the method for determining if a State supports  
2           a proposal.”.

3           (b) **ADDITIONAL STAFF.**—Section 1008 of such Act  
4 (12 U.S.C. 3307) is amended by adding at the end the  
5 following new subsection:

6           “(d) **CONSUMER PROTECTION STAFF.**—

7           “(1) **IN GENERAL.**—At the request of the Coun-  
8 cil, any member of the expanded Board, other than  
9 the Chairman of the State Liaison Committee, may  
10 detail, on a reimbursable basis, any of the personnel  
11 of that member’s department or agency to the Coun-  
12 cil to assist it in carrying out the Council’s duties  
13 under subsection (h).

14           “(2) **EXPANDED BOARD REQUIRED.**—When  
15 making any request under this subsection, the Coun-  
16 cil shall consist of the expanded Board.”.

17 **SEC. 2004. OFFICE OF CONSUMER PROTECTION.**

18           The Federal Financial Institutions Examination  
19 Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended  
20 by adding at the end the following new section:

21 **“SEC. 1012. OFFICE OF CONSUMER PROTECTION.**

22           “(a) **OFFICE OF CONSUMER PROTECTION.**—There is  
23 hereby established within the Council an Office of Con-  
24 sumer Protection (hereinafter in this section referred to  
25 as the ‘Office’).

1       “(b) CONSUMER COMPLAINT HOTLINE AND  
2 WEBSITE.—The Office shall establish a toll-free hotline  
3 and a website for consumers to contact regarding inquiries  
4 or complaints related to consumer protection. Such hotline  
5 and website shall then refer such inquiries or complaints  
6 to the appropriate Council member, which will then re-  
7 spond to the inquiry or complaint.

8       “(c) DISCLOSURE REVIEW.—Not less often than once  
9 every 7 years, the Office shall undertake a comprehensive  
10 review of the rules and regulations regarding disclosures  
11 made by entities under the jurisdiction of the members  
12 of the Council to consumers. In making such review the  
13 Office shall perform a cost and benefit analysis of each  
14 such disclosure and determine if the policy of the members  
15 of the Council towards such disclosure should remain the  
16 same or be revised.

17       “(d) CONSUMER TESTING REQUIREMENT.—Before  
18 prescribing any regulation pursuant to section 1006(h),  
19 the Council shall have the Office carry out consumer test-  
20 ing with respect to such proposed model regulation.

21       “(e) PERIODIC REVIEW OF REGULATIONS.—

22               “(1) REVIEW.—Not less than once every 7  
23 years, the Office shall undertake a comprehensive re-  
24 view of all regulations issued by the members of the  
25 Council pursuant to section 1006(h)(2). In making

1 such review, the Office shall perform a cost and ben-  
2 efit analysis of each regulation and determine if such  
3 regulation should remain the same or if such regula-  
4 tion should be revised.

5 “(2) REPORT.—After performing a review re-  
6 quired by paragraph (1), the Office shall issue a re-  
7 port to the Congress describing the review process,  
8 any determinations made by the Office, and any re-  
9 visions to regulations that the Office determined  
10 were needed.”.

11 **SEC. 2005. STATE ENFORCEMENT AUTHORITY.**

12 (a) ENFORCEMENT OF COUNCIL REGULATIONS.—  
13 The Federal Financial Institutions Examination Council  
14 Act of 1978 (12 U.S.C. 3301 et seq.), as amended by sec-  
15 tion 2004, is further amended by adding at the end the  
16 following new section:

17 **“SEC. 1013. STATE ENFORCEMENT AUTHORITY.**

18 “The chief law enforcement officer of a State, or an  
19 official or agency designated by a State, shall have the  
20 authority to enforce any regulations issued by the mem-  
21 bers of the Council pursuant to section 1006(h)(2) against  
22 entities regulated by such State.”.

23 (b) ENFORCEMENT OF STATE CONSUMER PROTEC-  
24 TION LAWS AGAINST NATIONAL BANKS AND THRIFTS.—  
25 Notwithstanding any other provision of law, other than

1 section 5240 of the Revised Statutes and the comparable  
2 limitation on visitorial authority applicable to federal sav-  
3 ings associations, the chief law enforcement officer of a  
4 State, or an official or agency designated by a State, shall  
5 have the right to enforce such State's non-preempted con-  
6 sumer protection laws against national banks.

7 **SEC. 2006. UNFAIR OR DECEPTIVE ACTS OR PRACTICES AU-**  
8 **THORITY TRANSFERRED.**

9 Section 18(f)(1) of the Federal Trade Commission  
10 Act (15 U.S.C. 57a(f)(1)) is amended—

11 (1) by striking “(with respect to banks) and the  
12 Federal Home Loan Bank Board (with respect to  
13 savings and loan institutions described in paragraph  
14 (3))” and inserting the following: “(with respect to  
15 entities described in paragraph (2)(B)), the Comp-  
16 troller of the Currency (with respect to entities de-  
17 scribed in paragraph (2)(A)), the Board of Directors  
18 of the Federal Deposit Insurance Corporation (with  
19 respect to entities described under paragraph  
20 (2)(C)), the Director of the Office of Thrift Super-  
21 vision (with respect to savings associations or any  
22 savings and loan institutions described in paragraph  
23 (3)),”;

24 (2) by striking “each such Board” and insert-  
25 ing “each such entity”; and

1           (3) by striking “any such Board” and inserting  
2           “any such entity”.

3 **SEC. 2007. EQUALITY OF CONSUMER PROTECTION FUNC-**  
4                                   **TIONS; CONSUMER PROTECTION DIVISIONS.**

5           (a) EQUALITY OF CONSUMER PROTECTION FUNC-  
6 TIONS.—With respect to each regulatory agency, the func-  
7 tions of such agency related to consumer protection shall  
8 be of equal importance to such agency as the other func-  
9 tions of such agency.

10          (b) CONSUMER PROTECTION DIVISIONS.—

11           (1) IN GENERAL.—There is hereby established  
12           within each regulatory agency a consumer protection  
13           division.

14           (2) REPORT.—The head of each consumer pro-  
15           tection division established under paragraph (1)  
16           shall submit an annual report to the Congress detail-  
17           ing the performance of the regulatory agency in  
18           which such division is located in enforcing the con-  
19           sumer protection laws.

20           (c) REGULATORY AGENCY DEFINED.—For purposes  
21 of this section, the term “regulatory agency” means the  
22 Office of the Comptroller of the Currency, the Board of  
23 Governors of the Federal Reserve System, the Federal De-  
24 posit Insurance Corporation, the Office of Thrift Super-  
25 vision, the National Credit Union Administration, the

1 Federal Trade Commission, and the Department of Hous-  
2 ing and Urban Development.

3 **SEC. 2008. PROHIBITION ON CHARTER CONVERSIONS**  
4 **WHILE UNDER REGULATORY SANCTION.**

5 With respect to an entity for which there is an appro-  
6 priate Federal banking agency, as such term is defined  
7 under section 3(q) of the Federal Deposit Insurance Act  
8 (12 U.S.C. 1813(q)), such agency shall issue regulations  
9 prohibiting such an entity from converting the type of  
10 such entity's charter during any time in which such entity  
11 is under a regulatory sanction by such agency.

12 **TITLE III—ANTI-FRAUD**  
13 **PROVISIONS**

14 **SEC. 3001. AUTHORITY TO IMPOSE CIVIL PENALTIES IN**  
15 **CEASE AND DESIST PROCEEDINGS.**

16 (a) UNDER THE SECURITIES ACT OF 1933.—Section  
17 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is  
18 amended by adding at the end the following new sub-  
19 section:

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

21 “(1) GROUNDS FOR IMPOSING.—In any cease-  
22 and-desist proceeding under subsection (a), the  
23 Commission may impose a civil penalty on a person  
24 if it finds, on the record after notice and opportunity  
25 for hearing, that—

1 “(A) such person—

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

5 “(ii) is or was a cause of the violation  
6 of any provision of this title, or any rule or  
7 regulation thereunder; and

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

9 “(2) MAXIMUM AMOUNT OF PENALTY.—

10 “(A) FIRST TIER.—The maximum amount  
11 of penalty for each act or omission described in  
12 paragraph (1) shall be \$6,500 for a natural  
13 person or \$65,000 for any other person.

14 “(B) SECOND TIER.—Notwithstanding  
15 paragraph (A), the maximum amount of pen-  
16 alty for each such act or omission shall be  
17 \$65,000 for a natural person or \$325,000 for  
18 any other person if the act or omission de-  
19 scribed in paragraph (1) involved fraud, deceit,  
20 manipulation, or deliberate or reckless dis-  
21 regard of a regulatory requirement.

22 “(C) THIRD TIER.—Notwithstanding para-  
23 graphs (A) and (B), the maximum amount of  
24 penalty for each such act or omission shall be

1           \$130,000 for a natural person or \$650,000 for  
2           any other person if—

3                   “(i) the act or omission described in  
4                   paragraph (1) involved fraud, deceit, ma-  
5                   nipulation, or deliberate or reckless dis-  
6                   regard of a regulatory requirement; and

7                   “(ii) such act or omission directly or  
8                   indirectly resulted in substantial losses or  
9                   created a significant risk of substantial  
10                  losses to other persons or resulted in sub-  
11                  stantial pecuniary gain to the person who  
12                  committed the act or omission.

13                  “(3) EVIDENCE CONCERNING ABILITY TO  
14                  PAY.—In any proceeding in which the Commission  
15                  may impose a penalty under this section, a respond-  
16                  ent may present evidence of the respondent’s ability  
17                  to pay such penalty. The Commission may, in its  
18                  discretion, consider such evidence in determining  
19                  whether such penalty is in the public interest. Such  
20                  evidence may relate to the extent of such person’s  
21                  ability to continue in business and the collectability  
22                  of a penalty, taking into account any other claims of  
23                  the United States or third parties upon such per-  
24                  son’s assets and the amount of such person’s as-  
25                  sets.”.

1 (b) UNDER THE SECURITIES EXCHANGE ACT OF  
2 1934.—Subsection (a) of section 21B of the Securities  
3 Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amend-  
4 ed—

5 (1) by striking “(a) COMMISSION AUTHORITY  
6 TO ASSESS MONEY PENALTIES.—In any pro-  
7 ceeding” and inserting the following:

8 “(a) COMMISSION AUTHORITY TO ASSESS MONEY  
9 PENALTIES.—

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

11 (2) by redesignating paragraphs (1) through  
12 (4) of such subsection as subparagraphs (A) through  
13 (D), respectively and moving such redesignated sub-  
14 paragraphs and the matter following such subpara-  
15 graphs 2 ems to the right; and

16 (3) by adding at the end of such subsection the  
17 following new paragraph:

18 “(2) CEASE-AND-DESIST PROCEEDINGS.—In  
19 any proceeding instituted pursuant to section 21C of  
20 this title against any person, the Commission may  
21 impose a civil penalty if it finds, on the record after  
22 notice and opportunity for hearing, that such per-  
23 son—

1           “(A) is violating or has violated any provi-  
2           sion of this title, or any rule or regulation  
3           thereunder; or

4           “(B) is or was a cause of the violation of  
5           any provision of this title, or any rule or regula-  
6           tion thereunder.”.

7           (c) UNDER THE INVESTMENT COMPANY ACT OF  
8           1940.—Paragraph (1) of section 9(d) of the Investment  
9           Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amend-  
10          ed—

11           (1) by striking “(1) AUTHORITY OF COMMIS-  
12           SION.—In any proceeding” and inserting the fol-  
13           lowing:

14           “(1) AUTHORITY OF COMMISSION.—

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

16           (2) by redesignating subparagraphs (A) through  
17           (C) of such paragraph as clauses (i) through (iii),  
18           respectively and by moving such redesignated clauses  
19           and the matter following such subparagraphs 2 ems  
20           to the right; and

21           (3) by adding at the end of such paragraph the  
22           following new subparagraph:

23           “(B) CEASE-AND-DESIST PROCEEDINGS.—

24           In any proceeding instituted pursuant to sub-  
25           section (f) against any person, the Commission

1           may impose a civil penalty if it finds, on the  
2           record after notice and opportunity for hearing,  
3           that such person—

4                   “(i) is violating or has violated any  
5                   provision of this title, or any rule or regu-  
6                   lation thereunder; or

7                   “(ii) is or was a cause of the violation  
8                   of any provision of this title, or any rule or  
9                   regulation thereunder.”.

10       (d) UNDER THE INVESTMENT ADVISERS ACT OF  
11 1940.—Paragraph (1) of section 203(i) of the Investment  
12 Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amend-  
13 ed—

14           (1) by striking “(1) AUTHORITY OF COMMIS-  
15           SION.—In any proceeding” and inserting the fol-  
16           lowing:

17                   “(1) AUTHORITY OF COMMISSION.—

18                   “(A) IN GENERAL.—In any proceeding”;

19           (2) by redesignating subparagraphs (A) through  
20           (D) of such paragraph as clauses (i) through (iv),  
21           respectively and moving such redesignated clauses  
22           and the matter following such subparagraphs 2 ems  
23           to the right; and

24           (3) by adding at the end of such paragraph the  
25           following new subparagraph:

1                   “(B) CEASE-AND-DESIST PROCEEDINGS.—

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

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

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

13 **SEC. 3002. FORMERLY ASSOCIATED PERSONS.**

14                   (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-  
15                   CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of  
16                   the Securities Exchange Act of 1934 (15 U.S.C. 78o-  
17                   4(c)(8)) is amended by striking “any member or em-  
18                   ployee” and inserting “any person who is, or at the time  
19                   of the alleged misconduct was, a member or employee”.

20                   (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-  
21                   CURITIES BROKER OR DEALER.—Section 15C of the Se-  
22                   curities Exchange Act of 1934 (15 U.S.C. 78o-5) is  
23                   amended—

24                   (1) in subsection (c)(1)(C), by striking “or  
25                   seeking to become associated,” and inserting “seek-

1 ing to become associated, or, at the time of the al-  
2 leged misconduct, associated or seeking to become  
3 associated”;

4 (2) in subsection (c)(2)(A), by inserting “, seek-  
5 ing to become associated, or, at the time of the al-  
6 leged misconduct, associated or seeking to become  
7 associated” after “any person associated”; and

8 (3) in subsection (c)(2)(B), by inserting “,  
9 seeking to become associated, or, at the time of the  
10 alleged misconduct, associated or seeking to become  
11 associated” after “any person associated”.

12 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-  
13 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-  
14 TIES ASSOCIATION.—Section 21(a)(1) of the Securities  
15 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended  
16 by inserting “, or, as to any act or practice, or omission  
17 to act, while associated with a member, formerly associ-  
18 ated” after “member or a person associated”.

19 (d) PARTICIPANT OF A REGISTERED CLEARING  
20 AGENCY.—Section 21(a)(1) of the Securities Exchange  
21 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-  
22 ing “or, as to any act or practice, or omission to act, while  
23 a participant, was a participant,” after “in which such  
24 person is a participant,”.

1 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY  
2 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-  
3 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

4 (1) by striking “any officer or director” and in-  
5 serting “any person who is, or at the time of the al-  
6 leged misconduct was, an officer or director”; and

7 (2) by striking “such officer or director” and  
8 inserting “such person”.

9 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-  
10 PANY.—Section 36(a) of the Investment Company Act of  
11 1940 (15 U.S.C. 80a–35(a)) is amended—

12 (1) by striking “a person serving or acting” and  
13 inserting “a person who is, or at the time of the al-  
14 leged misconduct was, serving or acting”; and

15 (2) by striking “such person so serves or acts”  
16 and inserting “such person so serves or acts, or at  
17 the time of the alleged misconduct, so served or  
18 acted”.

19 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-  
20 ING FIRM.—

21 (1) SARBANES-OXLEY ACT OF 2002 AMEND-  
22 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act  
23 of 2002 (15 U.S.C. 7201(9)) is amended by adding  
24 at the end the following new subparagraph:

1           “(C) INVESTIGATIVE AND ENFORCEMENT  
2           AUTHORITY.—For purposes of the provisions of  
3           sections 3(e), 101(c), 105, and 107(e) and  
4           Board or Commission rules thereunder, except  
5           to the extent specifically excepted by such rules,  
6           the terms defined in subparagraph (A) shall in-  
7           clude any person associated, seeking to become  
8           associated, or formerly associated with a public  
9           accounting firm, except—

10                   “(i) the authority to conduct an inves-  
11                   tigation of such person under section  
12                   105(b) shall apply only with respect to any  
13                   act or practice, or omission to act, while  
14                   such person was associated or seeking to  
15                   become associated with a registered public  
16                   accounting firm; and

17                   “(ii) the authority to commence a pro-  
18                   ceeding under section 105(c)(1), or impose  
19                   disciplinary sanctions under section  
20                   105(c)(4), against such person shall apply  
21                   only on—

22                           “(I) the basis of conduct occur-  
23                           ring while such person was associated  
24                           or seeking to become associated with  
25                           a registered public accounting firm; or

1                   “(II) non-cooperation as de-  
2                   scribed in section 105(b)(3) with re-  
3                   spect to a demand in a Board inves-  
4                   tigation for testimony, documents, or  
5                   other information relating to a period  
6                   when such person was associated or  
7                   seeking to become associated with a  
8                   registered public accounting firm.”.

9                   (2) SECURITIES EXCHANGE ACT OF 1934  
10                  AMENDMENT.—Section 21(a)(1) of the Securities  
11                  Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is  
12                  amended by striking “or a person associated with  
13                  such a firm” and inserting “, a person associated  
14                  with such a firm, or, as to any act, practice, or omis-  
15                  sion to act while associated with such firm, a person  
16                  formerly associated with such a firm”.

17                  (h) SUPERVISORY PERSONNEL OF AN AUDIT  
18                  FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of  
19                  2002 (15 U.S.C. 7215(c)(6)) is amended—

20                   (1) in subparagraph (A), by striking “the su-  
21                   pervisory personnel” and inserting “any person who  
22                   is, or at the time of the alleged failure reasonably to  
23                   supervise was, a supervisory person”; and

24                   (2) in subparagraph (B)—

1 (A) by striking “No associated person”  
2 and inserting “No current or former super-  
3 visory person”; and

4 (B) by striking “any other person” and in-  
5 serting “any associated person”.

6 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING  
7 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-  
8 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by  
9 striking “any member” and inserting “any person who is,  
10 or at the time of the alleged misconduct was, a member”.

11 **SEC. 3003. COLLATERAL BARS.**

12 (a) SECTION 15(b)(6)(A) OF THE SECURITIES EX-  
13 CHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Secu-  
14 rities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is  
15 amended by striking “12 months, or bar such person from  
16 being associated with a broker or dealer,” and inserting  
17 “12 months, or bar any such person from being associated  
18 with a broker, dealer, investment adviser, municipal secu-  
19 rities dealer, or transfer agent,”.

20 (b) SECTION 15B(c)(4) OF THE SECURITIES EX-  
21 CHANGE ACT OF 1934.—Section 15B(c)(4) of the Securi-  
22 ties Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is  
23 amended by striking “twelve months or bar any such per-  
24 son from being associated with a municipal securities deal-  
25 er,” and inserting “twelve months or bar any such person

1 from being associated with a broker, dealer, investment  
2 adviser, municipal securities dealer, or transfer agent,”.

3 (c) SECTION 17A(c)(4)(C) OF THE SECURITIES EX-  
4 CHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Se-  
5 curities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(4)(C))  
6 is amended by striking “twelve months or bar any such  
7 person from being associated with the transfer agent,”  
8 and inserting “twelve months or bar any such person from  
9 being associated with any transfer agent, broker, dealer,  
10 investment adviser, or municipal securities dealer,”.

11 (d) SECTION 203(f) OF THE INVESTMENT ADVISERS  
12 ACT OF 1940.—Section 203(f) of the Investment Advisers  
13 Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking  
14 “twelve months or bar any such person from being associ-  
15 ated with an investment adviser,” and inserting “twelve  
16 months or bar any such person from being associated with  
17 an investment adviser, broker, dealer, municipal securities  
18 dealer, or transfer agent,”.

19 **SEC. 3004. UNLAWFUL MARGIN LENDING.**

20 Section 7(c)(1)(A) of the Securities Exchange Act of  
21 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;  
22 and” and inserting “; or”.

23 **SEC. 3005. NATIONWIDE SERVICE OF PROCESS.**

24 (a) SECURITIES ACT OF 1933.—Section 22(a) of the  
25 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by

1 inserting after the second sentence the following: “In any  
2 civil action instituted by the Commission under this title  
3 in a United States district court for any judicial district,  
4 subpoenas issued to compel the attendance of witnesses  
5 or the production of documents or tangible things (or  
6 both) at any hearing or trial may be served at any place  
7 within the United States. Rule 45(c)(3)(A)(ii) of the Fed-  
8 eral Rules of Civil Procedure does not apply to a subpoena  
9 so issued.”.

10 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
11 27 of the Securities Exchange Act of 1934 (15 U.S.C.  
12 78aa) is amended by inserting after the third sentence the  
13 following: “In any civil action instituted by the Commis-  
14 sion under this title in a United States district court for  
15 any judicial district, subpoenas issued to compel the at-  
16 tendance of witnesses or the production of documents or  
17 tangible things (or both) at any hearing or trial may be  
18 served at any place within the United States. Rule  
19 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure  
20 does not apply to a subpoena so issued.”.

21 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
22 44 of the Investment Company Act of 1940 (15 U.S.C.  
23 80a–43) is amended by inserting after the fourth sentence  
24 the following: “In any civil action instituted by the Com-  
25 mission under this title in a United States district court

1 for any judicial district, subpoenas issued to compel the  
2 attendance of witnesses or the production of documents  
3 or tangible things (or both) at any hearing or trial may  
4 be served at any place within the United States. Rule  
5 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure  
6 does not apply to a subpoena so issued.”.

7 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
8 214 of the Investment Advisers Act of 1940 (15 U.S.C.  
9 80b–14) is amended by inserting after the third sentence  
10 the following: “In any civil action instituted by the Com-  
11 mission under this title in a United States district court  
12 for any judicial district, subpoenas issued to compel the  
13 attendance of witnesses or the production of documents  
14 or tangible things (or both) at any hearing or trial may  
15 be served at any place within the United States. Rule  
16 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure  
17 does not apply to a subpoena so issued.”.

18 **SEC. 3006. REAUTHORIZATION OF THE FINANCIAL CRIMES**

19 **ENFORCEMENT NETWORK.**

20 (a) FINDINGS.—

21 (1) The Congress finds as follows:

22 (A) The work of the Financial Crimes En-  
23 forcement Network (hereinafter in this section  
24 referred to as “FinCEN”) is essential to safe-  
25 guard the United States financial system and

1           its international affiliates from the abuses of fi-  
2           nancial crime, including terrorist financing,  
3           weapons of mass destruction proliferation, and  
4           money laundering.

5           (B) All avenues of financial intermediation  
6           are vulnerable to abuse by illicit actors, and  
7           FinCEN exercises the authorities of the Bank  
8           Secrecy Act over a broad range of financial in-  
9           stitutions.

10          (2) The Congress further finds and recognizes  
11          the recent establishment by FinCEN of an Inter-  
12          national Programs Division to expand and enhance  
13          global financial intelligence sharing initiatives aimed  
14          at combating transnational crime threats facing  
15          United States financial markets, and takes note of  
16          FinCEN's efforts to collaborate with foreign finan-  
17          cial intelligence unit partners on analytical projects  
18          to identify and address emerging threats and  
19          vulnerabilities.

20          (3) The Congress further finds and recognizes  
21          the role of FinCEN in discovering and investigating  
22          widespread fraud in the mortgage market and else-  
23          where in the financial services industry. Alongside  
24          an effective licensing and registration system for all  
25          mortgage originators, a vigilant FinCEN is critical

1 to the recovery of our housing markets and con-  
2 sumer confidence in both the home buying process  
3 and the financial services industry as a whole.

4 (b) REAUTHORIZATION.—Section 310(d)(1) of title  
5 31, United States Code, is amended by striking “such  
6 sums as may be necessary for fiscal years 2002, 2003,  
7 2004, and 2005” and inserting “not more than  
8 \$105,500,000 for fiscal year 2010, and such sums as may  
9 be necessary for fiscal years 2011, 2012, 2013, and  
10 2014”.

11 (c) ADDITIONAL FINANCIAL FRAUD AUTHORIZATION  
12 OF APPROPRIATIONS.—In addition to such other amounts  
13 otherwise made available or appropriated to FinCEN,  
14 there are authorized to be appropriated to FinCEN  
15 \$15,000,000 to be used specifically for efforts to detect  
16 financial fraud. Such sums are authorized to remain avail-  
17 able until expended.

18 **SEC. 3007. FAIR FUND IMPROVEMENTS.**

19 (a) AMENDMENT.—Subsection (a) of section 308 of  
20 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is  
21 amended to read as follows:

22 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-  
23 LIEF OF VICTIMS.—If in any judicial or administrative ac-  
24 tion brought by the Commission under the securities laws  
25 (as such term is defined in section 3(a)(47) of the Securi-

1 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the  
2 Commission obtains a civil penalty against any person for  
3 a violation of such laws, the amount of such civil penalty  
4 shall, on the motion or at the direction of the Commission,  
5 be added to and become part of a disgorgement fund or  
6 other fund established for the benefit of the victims of  
7 such violation.”.

8 (b) CONFORMING AMENDMENTS.—Section 308 of  
9 such Act is amended—

10 (1) in subsection (b)—

11 (A) by striking “for a disgorgement fund  
12 described in subsection (a)” and inserting “for  
13 a disgorgement fund or other fund described in  
14 subsection (a)”;

15 (B) by striking “in the disgorgement fund”  
16 and inserting “in such fund”; and

17 (2) by striking subsection (e).

18 **TITLE IV—OVER-THE-COUNTER**  
19 **DERIVATIVES MARKETS**

20 **SECTION 4001. SHORT TITLE.**

21 This title may be cited as the “Over-the-Counter De-  
22 rivatives Markets Act of 2009”.

1           **Subtitle A—Amendments to the**  
2                   **Commodity Exchange Act**

3   **SEC. 4100. DEFINITIONS.**

4           Section 1a of the Commodity Exchange Act (7 U.S.C.  
5 1a) is amended by adding at the end the following:

6                   “(35) SWAP.—

7                           “(A) IN GENERAL.—Except as provided in  
8                   subparagraph (B), the term ‘swap’ means any  
9                   agreement, contract, or transaction that—

10                                   “(i) is a put, call, cap, floor, collar, or  
11                                   similar option of any kind for the purchase  
12                                   or sale of, or based on the value of, one or  
13                                   more interest or other rates, currencies,  
14                                   commodities, securities, instruments of in-  
15                                   debtedness, indices, quantitative measures,  
16                                   or other financial or economic interests or  
17                                   property of any kind;

18                                   “(ii) provides for any purchase, sale,  
19                                   payment, or delivery (other than a dividend  
20                                   on an equity security) that is dependent on  
21                                   the occurrence, non-occurrence, or the ex-  
22                                   tent of the occurrence of an event or con-  
23                                   tingency associated with a potential finan-  
24                                   cial, economic, or commercial consequence;

1           “(iii) provides on an executory basis  
2           for the exchange, on a fixed or contingent  
3           basis, of one or more payments based on  
4           the value or level of one or more interest  
5           or other rates, currencies, commodities, se-  
6           curities, instruments of indebtedness, indi-  
7           ces, quantitative measures, or other finan-  
8           cial or economic interests or property of  
9           any kind, or any interest therein or based  
10          on the value thereof, and that transfers, as  
11          between the parties to the transaction, in  
12          whole or in part, the financial risk associ-  
13          ated with a future change in any such  
14          value or level without also conveying a cur-  
15          rent or future direct or indirect ownership  
16          interest in an asset (including any enter-  
17          prise or investment pool) or liability that  
18          incorporates the financial risk so trans-  
19          ferred, including any agreement, contract,  
20          or transaction commonly known as an in-  
21          terest rate swap, a rate floor, rate cap,  
22          rate collar, cross-currency rate swap, basis  
23          swap, currency swap, total return swap,  
24          equity index swap, equity swap, debt index  
25          swap, debt swap, credit spread, credit de-

1           fault swap, credit swap, weather swap, en-  
2           ergy swap, metal swap, agricultural swap,  
3           emissions swap, or commodity swap;

4           “(iv) is an agreement, contract, or  
5           transaction that is, or in the future be-  
6           comes, commonly known to the trade as a  
7           swap; or

8           “(v) is any combination or permuta-  
9           tion of, or option on, any agreement, con-  
10          tract, or transaction described in any of  
11          clauses (i) through (iv).

12          “(B) EXCLUSIONS.—The term ‘swap’ does  
13          not include:

14               “(i) any contract of sale of a com-  
15               modity for future delivery or security fu-  
16               tures product traded on or subject to the  
17               rules of any board of trade designated as  
18               a contract market under section 5 or 5f;

19               “(ii) any sale of a nonfinancial com-  
20               modity for deferred shipment or delivery,  
21               so long as such transaction is physically  
22               settled;

23               “(iii) any put, call, straddle, option, or  
24               privilege on any security, certificate of de-  
25               posit, or group or index of securities, in-

1 including any interest therein or based on  
2 the value thereof, that is subject to the Se-  
3 curities Act of 1933 (15 U.S.C. 77a et  
4 seq.) and the Securities Exchange Act of  
5 1934 (15 U.S.C. 78a et seq.);

6 “(iv) any put, call, straddle, option, or  
7 privilege relating to foreign currency en-  
8 tered into on a national securities exchange  
9 registered pursuant to section 6(a) of the  
10 Securities Exchange Act of 1934 (15  
11 U.S.C. 78f(a));

12 “(v) any agreement, contract, or  
13 transaction providing for the purchase or  
14 sale of one or more securities on a fixed  
15 basis that is subject to the Securities Act  
16 of 1933 (15 U.S.C. 77a et seq.) and the  
17 Securities Exchange Act of 1934 (15  
18 U.S.C. 78a et seq.);

19 “(vi) any agreement, contract, or  
20 transaction providing for the purchase or  
21 sale of one or more securities on a contin-  
22 gent basis that is subject to the Securities  
23 Act of 1933 (15 U.S.C. 77a et seq.) and  
24 the Securities Exchange Act of 1934 (15  
25 U.S.C. 78a et seq.), unless such agree-

1                   ment, contract, or transaction predicates  
2                   such purchase or sale on the occurrence of  
3                   a bona fide contingency that might reason-  
4                   ably be expected to affect or be affected by  
5                   the creditworthiness of a party other than  
6                   a party to the agreement, contract, or  
7                   transaction;

8                   “(vii) any note, bond, or evidence of  
9                   indebtedness that is a security as defined  
10                  in section 2(a)(1) of the Securities Act of  
11                  1933 (15 U.S.C. 77b(a)(1));

12                  “(viii) any agreement, contract, or  
13                  transaction that is—

14                         “(I) based on a security; and

15                         “(II) entered into directly or  
16                         through an underwriter (as defined in  
17                         section 2(a)(11) of the Securities Act  
18                         of 1933) (15 U.S.C. 77b(a)(11)) by  
19                         the issuer of such security for the  
20                         purposes of raising capital, unless  
21                         such agreement, contract, or trans-  
22                         action is entered into to manage a  
23                         risk associated with capital raising;

24                         “(ix) any foreign exchange swap;

25                         “(x) any foreign exchange forward;

1                   “(xi) any agreement, contract, or  
2                   transaction a counterparty of which is a  
3                   Federal Reserve bank or the United States  
4                   Government, or an agency of the United  
5                   States Government that is expressly  
6                   backed by the full faith and credit of the  
7                   United States; and

8                   “(xii) any security-based swap, other  
9                   than a security-based swap as described in  
10                  paragraph (36)(C).

11                  “(C) RULE OF CONSTRUCTION REGARDING  
12                  MASTER AGREEMENTS.—The term ‘swap’ shall  
13                  be construed to include a master agreement  
14                  that provides for an agreement, contract, or  
15                  transaction that is a swap pursuant to subpara-  
16                  graph (A), together with all supplements to any  
17                  such master agreement, without regard to  
18                  whether the master agreement contains an  
19                  agreement, contract, or transaction that is not  
20                  a swap pursuant to subparagraph (A), except  
21                  that the master agreement shall be considered  
22                  to be a swap only with respect to each agree-  
23                  ment, contract, or transaction under the master  
24                  agreement that is a swap pursuant to subpara-  
25                  graph (A).

1 “(36) SECURITY-BASED SWAP.—

2 “(A) IN GENERAL.—Except as provided in  
3 subparagraph (B), the term ‘security-based  
4 swap’ means any agreement, contract, or trans-  
5 action that would be a swap under paragraph  
6 (35) (without regard to paragraph  
7 (35)(B)(xii)), and that—

8 “(i) is based on an index that is a  
9 narrow-based security index, including any  
10 interest therein or based on the value  
11 thereof;

12 “(ii) is based on a single security or  
13 loan, including any interest therein or  
14 based on the value thereof; or

15 “(iii) is based on the occurrence, non-  
16 occurrence, or extent of the occurrence of  
17 an event relating to a single issuer of a se-  
18 curity or the issuers of securities in a nar-  
19 row-based security index, provided that  
20 such event must directly affect the finan-  
21 cial statements, financial condition, or fi-  
22 nancial obligations of the issuer.

23 “(B) EXCLUSION.—The term ‘security-  
24 based swap’ does not include any agreement,  
25 contract, or transaction that meets the defini-

1           tion of security-based swap only because it ref-  
2           erences or is based upon a government security.

3           “(C) MIXED SWAP.—The term ‘security-  
4           based swap’ includes any agreement, contract,  
5           or transaction that is as described in subpara-  
6           graph (A) and also is based on the value of one  
7           or more interest or other rates, currencies, com-  
8           modities, instruments of indebtedness, indices,  
9           quantitative measures, other financial or eco-  
10          nomic interest or property of any kind (other  
11          than a single security or a narrow-based secu-  
12          rity index), or the occurrence, non-occurrence,  
13          or the extent of the occurrence of an event or  
14          contingency associated with a potential finan-  
15          cial, economic, or commercial consequence  
16          (other than an event described in subparagraph  
17          (A)(iii)).

18          “(D) RULE OF CONSTRUCTION REGARDING  
19          MASTER AGREEMENTS.—The term ‘security-  
20          based swap’ shall be construed to include a  
21          master agreement that provides for an agree-  
22          ment, contract, or transaction that is a secu-  
23          rity-based swap pursuant to subparagraph (A),  
24          together with all supplements to any such mas-  
25          ter agreement, without regard to whether the

1 master agreement contains an agreement, con-  
2 tract, or transaction that is not a security-based  
3 swap pursuant to subparagraph (A), except  
4 that the master agreement shall be considered  
5 to be a security-based swap only with respect to  
6 each agreement, contract, or transaction under  
7 the master agreement that is a security-based  
8 swap pursuant to subparagraph (A).

9 “(37) SWAP DEALER.—

10 “(A) IN GENERAL.—The term ‘swap deal-  
11 er’ means any person engaged in the business  
12 of buying and selling swaps for such person’s  
13 own account, through a broker or otherwise,  
14 that is regulated by a Prudential Regulator.

15 “(B) EXCEPTION.—The term ‘swap dealer’  
16 does not include a person that buys or sells  
17 swaps for such person’s own account, either in-  
18 dividually or in a fiduciary capacity, but not as  
19 a part of a regular business.

20 “(38) SECURITY-BASED SWAP DEALER.—

21 “(A) IN GENERAL.—The term ‘security-  
22 based swap dealer’ means any person engaged  
23 in the business of buying and selling security-  
24 based swaps for such person’s own account,

1 through a broker or otherwise, that is regulated  
2 by a Prudential Regulator.

3 “(B) EXCEPTION.—The term ‘security-  
4 based swap dealer’ does not include a person  
5 that buys or sells security-based swaps for such  
6 person’s own account, either individually or in  
7 a fiduciary capacity, but not as a part of a reg-  
8 ular business.

9 “(39) MAJOR SWAP PARTICIPANT.—

10 “(A) IN GENERAL.—The term ‘major swap  
11 participant’ means any person who is not a  
12 swap dealer, who maintains a substantial net  
13 position in outstanding swaps, excluding posi-  
14 tions held primarily for hedging (including bal-  
15 ance sheet hedging) or risk management pur-  
16 poses, and who is regulated by a Prudential  
17 Regulator. A person may be designated as a  
18 major swap participant for 1 or more individual  
19 types of swaps.

20 “(B) DEFINITION OF ‘SUBSTANTIAL NET  
21 POSITION’.— The Commission and the Securi-  
22 ties and Exchange Commission shall jointly de-  
23 fine by rule or regulation the term ‘substantial  
24 net position’ at a threshold that the regulators  
25 determine prudent for the effective monitoring,

1 management and oversight of the financial sys-  
2 tem.

3 “(40) MAJOR SECURITY-BASED SWAP PARTICI-  
4 PANT.—

5 “(A) IN GENERAL.—The term ‘major secu-  
6 rity-based swap participant’ means any person  
7 who is not a security-based swap dealer, who  
8 maintains a substantial net position in out-  
9 standing security-based swaps, excluding posi-  
10 tions held primarily for commercial hedging (in-  
11 cluding balance sheet hedging) or financial risk  
12 management purposes, and who is regulated by  
13 a Prudential Regulator. A person may be des-  
14 ignated as a major security-based swap partici-  
15 pant for 1 or more individual types of security-  
16 based swaps.

17 “(B) DEFINITION OF ‘SUBSTANTIAL NET  
18 POSITION’.—The Commission and the Securi-  
19 ties and Exchange Commission shall jointly de-  
20 fine by rule or regulation the term ‘substantial  
21 net position’ at a threshold that the regulators  
22 determine prudent for the effective monitoring,  
23 management and oversight of the financial sys-  
24 tem.

1           “(41) APPROPRIATE FEDERAL BANKING AGEN-  
2           CY.—The term ‘appropriate Federal banking agency’  
3           has the same meaning as in section 3(q) of the Fed-  
4           eral Deposit Insurance Act (12 U.S.C. 1813(q)).

5           “(42) BOARD.—The term ‘Board’ means the  
6           Board of Governors of the Federal Reserve System.

7           “(43) PRUDENTIAL REGULATOR.—The term  
8           ‘Prudential Regulator’ means—

9                   “(A) the Board, in the case of a swap deal-  
10                  er, major swap participant, security-based swap  
11                  dealer or major security-based swap participant  
12                  that is—

13                           “(i) a State-chartered bank that is a  
14                           member of the Federal Reserve System;

15                           “(ii) a State-chartered branch or  
16                           agency of a foreign bank; or

17                           “(iii) a bank holding company (as de-  
18                           fined in section 2 of the Bank Holding  
19                           Company Act of 1956);

20                   “(B) the Office of the Comptroller of the  
21                   Currency, in the case of a swap dealer, major  
22                   swap participant, security-based swap dealer or  
23                   major security-based swap participant that is—

24                           “(i) a national bank; or

1                   “(ii) a federally chartered branch or  
2                   agency of a foreign bank;

3                   “(C) the Federal Deposit Insurance Cor-  
4                   poration, in the case of a swap dealer, major  
5                   swap participant, security-based swap dealer or  
6                   major security-based swap participant that is a  
7                   State-chartered bank that is not a member of  
8                   the Federal Reserve System; or

9                   “(D) the Office of Thrift Supervision, in  
10                  the case of a savings association (as defined in  
11                  section 2 of the Home Owners’ Loan Act) or a  
12                  savings and loan holding company (as defined  
13                  in section 10 of such Act).

14                  “(44) SWAP REPOSITORY.—The term ‘swap re-  
15                  pository’ means an entity that collects and maintains  
16                  the records of the terms and conditions of swaps or  
17                  security-based swaps entered into by third parties.”.

18 **SEC. 4101. SWAP REPOSITORIES.**

19                  (a) SWAP REPOSITORIES.—The Commodity Ex-  
20                  change Act (7 U.S.C. 1 et seq.) is amended by inserting  
21                  after section 20 the following:

22 **“SEC. 21. SWAP REPOSITORIES.**

23                  “(a) REQUIRED REPORTING.—

24                  “(1) IN GENERAL.—

1           “(A) IN GENERAL.—Any swap that is not  
2           accepted for clearing by a derivatives clearing  
3           organization shall be reported to either a swap  
4           repository registered pursuant to subsection (b)  
5           or, if there is no repository that would accept  
6           the swap, to the Commission in accordance with  
7           section 4r within such time period as the Com-  
8           mission may by rule prescribe.

9           “(B) AUTHORITY OF SWAP DEALER TO RE-  
10          PORT.—Counterparties to a swap may agree as  
11          to which counterparty will report such swap as  
12          required by subparagraph (A). In any swap  
13          where only one counterparty is a swap dealer,  
14          the swap dealer shall report the swap.

15          “(2) TRANSITION RULES.—Rules adopted by  
16          the Commission under this section shall provide for  
17          the reporting of data, as follows:

18                 “(A) Swaps that were entered into before  
19                 the date of enactment of the Over-the-Counter  
20                 Derivatives Markets Act of 2009 shall be re-  
21                 ported to a registered swap repository or the  
22                 Commission no later than 270 days after the  
23                 effective date of such Act.

24                 “(B) Swaps that were entered into on or  
25                 after the date of enactment of the Over-the-

1 Counter Derivatives Markets Act of 2009 shall  
2 be reported to a registered swap repository or  
3 the Commission no later than the later of—

4 “(i) 180 days after the effective date  
5 of such Act; or

6 “(ii) such other time after entering  
7 into the swap as the Commission may pre-  
8 scribe by rule or regulation.

9 “(b) SWAP REPOSITORIES.—

10 “(1) REGISTRATION REQUIREMENT.—

11 “(A) IN GENERAL.—It shall be unlawful  
12 for a swap repository, unless registered with the  
13 Commission, directly or indirectly to make use  
14 of the mails or any means or instrumentality of  
15 interstate commerce to perform the functions of  
16 a swap repository.

17 “(B) INSPECTION AND EXAMINATION.—  
18 Registered swap repositories shall be subject to  
19 inspection and examination by any representa-  
20 tives of the Commission.

21 “(2) STANDARD SETTING.—

22 “(A) DATA IDENTIFICATION.—The Com-  
23 mission shall prescribe standards that specify  
24 the data elements for each swap that shall be

1 collected and maintained by each swap reposi-  
2 tory.

3 “(B) DATA COLLECTION AND MAINTEN-  
4 NANCE.—The Commission shall prescribe data  
5 collection and data maintenance standards for  
6 swap repositories.

7 “(C) COMPARABILITY.—The standards  
8 prescribed by the Commission under this sub-  
9 section shall be comparable to the data stand-  
10 ards imposed by the Commission on derivatives  
11 clearing organizations that clear swaps.

12 “(3) DUTIES.—A swap repository shall—

13 “(A) accept data prescribed by the Com-  
14 mission for each swap under paragraph (2);

15 “(B) maintain such data in such form and  
16 manner and for such period as may be required  
17 by the Commission;

18 “(C) provide to the Commission, or its des-  
19 ignee, such information as is required by, and  
20 in a form and at a frequency to be determined  
21 by, the Commission, in order to comply with the  
22 public reporting requirements contained in sec-  
23 tion 8(j); and

24 “(D) make available, on a confidential  
25 basis, all data obtained by the swap repository,

1 including individual counterparty trade and po-  
2 sition data, to the Commission, the appropriate  
3 Federal banking agencies, the Commodity Fu-  
4 tures Trading Commission, the Financial Serv-  
5 ices Oversight Council, and the Department of  
6 Justice or to other persons the Commission  
7 deems appropriate, including foreign financial  
8 supervisors (including foreign futures authori-  
9 ties), foreign central banks, and foreign min-  
10 istries.

11 “(4) REQUIRED REGISTRATION FOR SWAP RE-  
12 POSITORIES.—Any person that is required to be reg-  
13 istered as a swap repository under this subsection  
14 shall register with the Commission, regardless of  
15 whether that person also is registered with the Secu-  
16 rities and Exchange Commission as a security-based  
17 swap repository.

18 “(5) HARMONIZATION OF RULES.—Not later  
19 than 270 days after the date of enactment of the  
20 Over-the-Counter Derivatives Markets Act of 2009,  
21 the Commission and the Securities and Exchange  
22 Commission shall jointly adopt uniform rules gov-  
23 erning persons that are registered under this section  
24 and persons that are registered as security-based  
25 swap repositories under the Securities Exchange Act

1 of 1934 (15 U.S.C. 78a et seq.), including uniform  
2 rules that specify the data elements that shall be col-  
3 lected and maintained by each repository.

4 “(6) EXEMPTIONS.—The Commission may ex-  
5 empt, conditionally or unconditionally, a swap repos-  
6 itory from the requirements of this section if the  
7 Commission finds that such swap repository is sub-  
8 ject to comparable, comprehensive supervision or  
9 regulation on a consolidated basis by the Securities  
10 and Exchange Commission, a Prudential Regulator  
11 or the appropriate governmental authorities in the  
12 organization’s home country, or as necessary or ap-  
13 propriate in the public interest and consistent with  
14 the purposes of this Act.”.

15 (b) REPORTING AND RECORDKEEPING.—The Com-  
16 modity Exchange Act (7 U.S.C. 1 et seq.) is amended by  
17 inserting after section 4q the following:

18 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**  
19 **SWAPS.**

20 “(a) IN GENERAL.—Any person who enters into a  
21 swap that is not accepted for clearing by a derivatives  
22 clearing organization and is not reported to a swap reposi-  
23 tory registered pursuant to section 21 shall meet the re-  
24 quirements in subsection (b).

1       “(b) REPORTS.—Any person described in subsection  
2 (a) shall—

3               “(1) make such reports in such form and man-  
4 ner and for such period as the Commission shall pre-  
5 scribe by rule or regulation regarding the swaps held  
6 by the person; and

7               “(2) keep books and records pertaining to the  
8 security-based swaps held by the person in such  
9 form and manner and for such period as may be re-  
10 quired by the Commission, which books and records  
11 shall be open to inspection by any representative of  
12 the Commission, an appropriate Federal banking  
13 agency, the Securities and Exchange Commission,  
14 the Financial Services Oversight Council, and the  
15 Department of Justice.

16       “(c) IDENTICAL DATA.—In adopting rules under this  
17 section, the Commission shall require persons described in  
18 subsection (a) to report the same or more comprehensive  
19 data than the Commission requires repositories to col-  
20 lect.”.

21       (c) PUBLIC REPORTING OF AGGREGATE SWAP  
22 DATA.—Section 8 of such Act (7 U.S.C. 12) is amended  
23 by adding at the end the following:

24       “(j) PUBLIC REPORTING OF AGGREGATE SWAP  
25 DATA.—

1           “(1) IN GENERAL.—The Commission, or a per-  
2           son designated by the Commission pursuant to para-  
3           graph (2), shall make available to the public, in a  
4           manner that does not disclose the business trans-  
5           actions and market positions of any person, aggre-  
6           gate data on swap trading volumes and positions  
7           from the sources set forth in paragraph (3).

8           “(2) DESIGNEE OF THE COMMISSION.—The  
9           Commission may designate a derivatives clearing or-  
10          ganization or a swap repository to carry out the  
11          public reporting described in paragraph (1).

12          “(3) SOURCES OF INFORMATION.—The sources  
13          of the information to be publicly reported as de-  
14          scribed in paragraph (1) are—

15                 “(A) derivatives clearing organizations;

16                 “(B) swap repositories pursuant to section  
17                 21(c)(3); and

18                 “(C) reports received by the Commission  
19                 pursuant to section 4r.”.

20   **SEC. 4102. MARGIN FOR SWAPS BETWEEN SWAPS DEALERS**  
21                                 **AND MAJOR SWAP PARTICIPANTS.**

22          The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
23          is amended by inserting after section 4r (as added by sec-  
24          tion 4101(b) of this title) the following:

1 **“SEC. 4s. MARGIN FOR SWAPS BETWEEN CERTAIN SWAPS**  
2 **DEALERS AND CERTAIN MAJOR SWAP PAR-**  
3 **TICIPANTS.**

4 “Each Prudential Regulator shall impose both initial  
5 and variation margin requirements on all swaps between  
6 swap dealers and major swap participants subject to regu-  
7 lation by the Regulator, that are not cleared by a deriva-  
8 tives clearing organization.”.

9 **SEC. 4103. SEGREGATION OF ASSETS HELD AS COLLAT-**  
10 **ERAL IN SWAP TRANSACTIONS.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
12 is amended by inserting after section 4s (as added by sec-  
13 tion 4102 of this title) the following:

14 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
15 **IN SWAP TRANSACTIONS.**

16 “(a) **CLEARED SWAPS.**—A swap dealer, futures com-  
17 mission merchant, or derivatives clearing organization by  
18 or through which funds or other property are held as mar-  
19 gin or collateral to secure the obligations of a counterparty  
20 under a swap to be cleared by or through a derivatives  
21 clearing organization shall segregate, maintain, and use  
22 the funds or other property for the benefit of the  
23 counterparty, in accordance with such rules and relations  
24 as the Commission or Prudential Regulator shall pre-  
25 scribe. Any such funds or other property shall be treated  
26 as customer property under this Act.

1           “(b) OVER-THE-COUNTER SWAPS.—At the request of  
2 a swap counterparty who provides funds or other property  
3 to a swap dealer as margin or collateral to secure the obli-  
4 gations of the counterparty under a swap entered into  
5 using the mails or any other means or instrumentalities  
6 of interstate commerce between the counterparty and the  
7 swap dealer that is not submitted for clearing to a deriva-  
8 tives clearing organization, the swap dealer shall segregate  
9 the funds or other property for the benefit of the  
10 counterparty, and maintain the funds or other property  
11 in an account which is carried by a third-party custodian  
12 and designated as a segregated account for the  
13 counterparty, in accordance with such rules and regula-  
14 tions as the Commission or Prudential Regulator may pre-  
15 scribe. Any such funds and property may, with the agree-  
16 ment of the customer, be commingled with the funds and  
17 property of other swap counterparties and customers and  
18 shall be eligible for treatment as customer property under  
19 this Act. This subsection shall not be interpreted to pre-  
20 clude commercial arrangements regarding the investment  
21 of the segregated funds or other property and the related  
22 allocation of gains and losses resulting from any such in-  
23 vestment or regarding the allocation of the costs of seg-  
24 regation.

1       “(c) MARK-TO-MARKET MARGIN.—Nothing in this  
2 section shall be construed to obligate any person to seg-  
3 regate variation or mark-to-market margin.”.

## 4       **Subtitle B—Amendments to the** 5       **Securities Exchange Act of 1934**

### 6       **SEC. 4201. DEFINITIONS.**

7       Section 3(a) of the Securities Exchange Act of 1934  
8 (15 U.S.C. 78c(a)) is amended by adding at the end the  
9 following:

10           “(65) APPROPRIATE FEDERAL BANKING AGEN-  
11           CY.—The term ‘appropriate Federal banking agency’  
12           has the same meaning as in section 3(q) of the Fed-  
13           eral Deposit Insurance Act (12 U.S.C. 1813(q)).

14           “(66) MAJOR SWAP PARTICIPANT.—The term  
15           ‘major swap participant’ has the same meaning as in  
16           section 1a(40) of the Commodity Exchange Act (7  
17           U.S.C. 1a(40)).

18           “(67) MAJOR SECURITY-BASED SWAP PARTICI-  
19           PANT.—The term ‘major security-based swap partic-  
20           ipant’ has the same meaning as in section 1a(41) of  
21           the Commodity Exchange Act (7 U.S.C. 1a(41)).

22           “(68) PRUDENTIAL REGULATOR.—The term  
23           ‘Prudential Regulator’ has the same meaning as in  
24           section 1a(43) of the Commodity Exchange Act (7  
25           U.S.C. 1a(43)).

1           “(69) SWAP.—The term ‘swap’ has the same  
2 meaning as in section 1a(35) of the Commodity Ex-  
3 change Act (7 U.S.C. 1a(35)).

4           “(70) SWAP DEALER.—The term ‘swap dealer’  
5 has the same meaning as in section 1a(39) of the  
6 Commodity Exchange Act (7 U.S.C. 1a(39)).

7           “(71) SECURITY-BASED SWAP.—The term ‘se-  
8 curity-based swap’ has the same meaning as in sec-  
9 tion 1a(38) of the Commodity Exchange Act (7  
10 U.S.C. 1a(38)).

11           “(72) SECURITY-BASED SWAP DEALER.—The  
12 term ‘security-based swap dealer’ has the same  
13 meaning as in section 1a(44) of the Commodity Ex-  
14 change Act (7 U.S.C. 1a(44)).”

15 **SEC. 4202. SWAP REPOSITORIES.**

16       (a) IN GENERAL.—The Securities Exchange Act of  
17 1934 (15 U.S.C. 78a, et seq.) is amended by adding the  
18 following section after section 3A:

19 **“SEC. 3B. SWAP REPOSITORIES.**

20       “(a) REQUIRED REPORTING.—

21           “(1) IN GENERAL.—

22               “(A) IN GENERAL.—Any security-based  
23 swap that is not accepted for clearing by any  
24 clearing agency shall be reported to either a se-  
25 curity-based swap repository registered pursu-

1 ant to subsection (b) or, if there is no reposi-  
2 tory that would accept the security-based swap,  
3 to the Commission in accordance with section  
4 13A within such time period as the Commission  
5 may by rule prescribe.

6 “(B) AUTHORITY OF SWAP DEALER TO RE-  
7 PORT.—Counterparties to a security-based swap  
8 may agree as to which counterparty will report  
9 such swap as required by subparagraph (A). In  
10 any security-based swap where only one  
11 counterparty is a swap dealer, the swap dealer  
12 shall report the swap.

13 “(2) TRANSITION RULES.—Rules adopted by  
14 the Commission under this section shall provide for  
15 the reporting of data, as follows:

16 “(A) Security-based swaps that were en-  
17 tered into before the date of enactment of the  
18 Over-the-Counter Derivatives Markets Act of  
19 2009 shall be reported to a registered security-  
20 based swap repository or the Commission no  
21 later than 270 days after the effective date of  
22 such Act.

23 “(B) Security-based swaps that were en-  
24 tered into on or after the date of enactment of  
25 the Over-the-Counter Derivatives Markets Act

1 of 2009 shall be reported to a registered secu-  
2 rity-based swap repository or the Commission  
3 no later than the later of—

4 “(i) 180 days after the effective date  
5 of such Act; or

6 “(ii) such other time after entering  
7 into the swap as the Commission may pre-  
8 scribe by rule or regulation.

9 “(b) SECURITY-BASED SWAP REPOSITORIES.—

10 “(1) REGISTRATION REQUIREMENT.—

11 “(A) IN GENERAL.—It shall be unlawful  
12 for a security-based swap repository, unless reg-  
13 istered with the Commission, directly or indi-  
14 rectly to make use of the mails or any means  
15 or instrumentality of interstate commerce to  
16 perform the functions of a security-based swap  
17 repository.

18 “(B) INSPECTION AND EXAMINATION.—  
19 Registered security-based swap repositories  
20 shall be subject to inspection and examination  
21 by any representatives of the Commission.

22 “(2) STANDARD SETTING.—

23 “(A) DATA IDENTIFICATION.—The Com-  
24 mission shall prescribe standards that specify  
25 the data elements for each security-based swap

1 that shall be collected and maintained by each  
2 security-based swap repository.

3 “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data  
4 collection and data maintenance standards for  
5 security-based swap repositories.  
6

7 “(C) COMPARABILITY.—The standards  
8 prescribed by the Commission under this sub-  
9 section shall be comparable to the data stand-  
10 ards imposed by the Commission on clearing  
11 agencies that clear security-based swaps.

12 “(3) DUTIES.—A security-based swap reposi-  
13 tory shall—

14 “(A) accept data prescribed by the Com-  
15 mission for each security-based swap under this  
16 paragraph (2);

17 “(B) maintain such data in such form and  
18 manner and for such period as may be required  
19 by the Commission;

20 “(C) provide to the Commission, or its des-  
21 ignee, such information as is required by, and  
22 in a form and at a frequency to be determined  
23 by, the Commission, in order to comply with the  
24 public reporting requirements contained in sec-  
25 tion 13(m); and

1           “(D) make available, on a confidential  
2           basis, all data obtained by the security-based  
3           swap repository, including individual  
4           counterparty trade and position data, to the  
5           Commission, the appropriate Federal banking  
6           agencies, the Commodity Futures Trading  
7           Commission, the Financial Services Oversight  
8           Council, and the Department of Justice or to  
9           other persons the Commission deems appro-  
10          priate, including foreign financial supervisors  
11          (including foreign futures authorities), foreign  
12          central banks, and foreign ministries.

13           “(4) REQUIRED REGISTRATION FOR SECURITY-  
14          BASED SWAP REPOSITORIES.—Any person that is re-  
15          quired to be registered as a securities-based swap re-  
16          pository under this subsection shall register with the  
17          Commission, regardless of whether that person also  
18          is registered with the Commodity Futures Trading  
19          Commission as a swap repository.

20           “(5) HARMONIZATION OF RULES.—Not later  
21          than 270 days after the date of enactment of the  
22          Over-the-Counter Derivatives Markets Act of 2009,  
23          the Commission and the Commodity Futures Trad-  
24          ing Commission shall jointly adopt uniform rules  
25          governing persons that are registered under this sec-



1 clearing agency and is not reported to a security-based  
2 swap repository registered pursuant to section 3B(b) shall  
3 meet the requirements in subsection (b).

4 “(b) REPORTS.—Any person described in subsection  
5 (a) shall—

6 “(1) make such reports in such form and man-  
7 ner and for such period as the Commission shall pre-  
8 scribe by rule or regulation regarding the security-  
9 based swaps held by the person; and

10 “(2) keep books and records pertaining to the  
11 security-based swaps held by the person in such  
12 form and manner and for such period as may be re-  
13 quired by the Commission, which books and records  
14 shall be open to inspection by any representative of  
15 the Commission, an appropriate Federal banking  
16 agency, the Commodity Futures Trading Commis-  
17 sion, the Financial Services Oversight Council, and  
18 the Department of Justice.

19 “(c) IDENTICAL DATA.—In adopting rules under this  
20 section, the Commission shall require persons described in  
21 subsection (a) to report the same or more comprehensive  
22 data than the Commission requires security-based swap  
23 repositories to collect.”.

24 (c) PUBLIC REPORTING AND REPOSITORIES FOR SE-  
25 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the

1 Securities Exchange Act of 1934 (15 U.S.C. 78m) is  
2 amended by adding at the end the following:

3 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-  
4 BASED SWAP DATA.—

5 “(1) IN GENERAL.—The Commission, or a per-  
6 son designated by the Commission pursuant to para-  
7 graph (2), shall make available to the public, in a  
8 manner that does not disclose the business trans-  
9 actions and market positions of any person, aggre-  
10 gate data on security-based swap trading volumes  
11 and positions from the sources set forth in para-  
12 graph (3).

13 “(2) DESIGNEE OF THE COMMISSION.—The  
14 Commission may designate a clearing agency or a  
15 security-based swap repository to carry out the pub-  
16 lic reporting described in paragraph (1).

17 “(3) SOURCES OF INFORMATION.—The sources  
18 of the information to be publicly reported as de-  
19 scribed in paragraph (1) are—

20 “(A) clearing agencies;

21 “(B) security-based swap repositories reg-  
22 istered pursuant to section 3B(b); and

23 “(C) reports received by the Commission  
24 pursuant to section 13A.”.

1 **SEC. 4203. MARGIN REQUIREMENTS.**

2 The Securities Exchange Act of 1934 (15 U.S.C. 78a,  
3 et seq.) is amended by adding the following section after  
4 section 3B:

5 **“SEC. 3C. MARGIN REQUIREMENTS FOR SECURITY-BASED**  
6 **SWAP DEALERS AND MAJOR SECURITY-**  
7 **BASED SWAP PARTICIPANTS.**

8 “Each Prudential Regulator shall impose both initial  
9 and variation margin requirements on all security-based  
10 swaps between security-based swap dealers and major se-  
11 curity-based swap participants subject to regulation by the  
12 Regulator, that are not cleared by a clearing agency.”

13 **SEC. 4204. SEGREGATION OF ASSETS HELD AS COLLAT-**  
14 **ERAL IN SWAP TRANSACTIONS.**

15 The Securities Exchange Act of 1934 (15 U.S.C. 78a,  
16 et seq.) is further amended by adding after section 3C (as  
17 added by section 4203) the following:

18 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
19 **IN SWAP TRANSACTIONS.**

20 “(a) CLEARED SWAPS.—A security-based swap deal-  
21 er or clearing agency by or through which funds or other  
22 property are held as margin or collateral to secure the obli-  
23 gations of a counterparty under a security-based swap to  
24 be cleared by or through a derivatives clearing agency  
25 shall segregate, maintain, and use the funds or other prop-  
26 erty for the benefit of the counterparty, in accordance with

1 such rules and regulations as the Commission or Pruden-  
2 tial Regulator shall prescribe. Any such funds or other  
3 property shall be treated as customer property under this  
4 Act.

5 “(b) OVER-THE-COUNTER SWAPS.—At the request of  
6 a counterparty to a security-based swap who provides  
7 funds or other property to a swap dealer as margin or  
8 collateral to secure the obligations of the counterparty  
9 under a security-based swap entered into using the mails  
10 or any other means or instrumentalities of interstate com-  
11 merce between the counterparty and the swap dealer that  
12 is not submitted for clearing to a derivatives clearing agen-  
13 cy, the swap dealer shall segregate the funds or other  
14 property for the benefit of the counterparty, and maintain  
15 the funds or other property in an account which is carried  
16 by a third-party custodian and designated as a segregated  
17 account for the counterparty, in accordance with such  
18 rules and regulations as the Commission or Prudential  
19 Regulator may prescribe. This subsection shall not be in-  
20 terpreted to preclude commercial arrangements regarding  
21 the investment of the segregated funds or other property  
22 and the related allocation of gains and losses resulting  
23 from any such investment or regarding the allocation of  
24 the costs of segregation.

1       “(c) MARK-TO-MARKET MARGIN.—Nothing in this  
2 section shall be construed to obligate any person to seg-  
3 regate variation or mark-to-market margin.”.

## 4       **Subtitle C—Common Provisions**

### 5       **SEC. 4301. REPORT TO THE CONGRESS.**

6       Within 1 year after the date of the enactment of this  
7 title, and not less frequently than annually thereafter, the  
8 Commodity Futures Trading Commission, the Securities  
9 and Exchange Commission, and the Prudential Regulators  
10 shall review data from swap repositories, security-based  
11 swap repositories, derivative clearing organizations, and  
12 clearing agencies, and if the Commodity Futures Trading  
13 Commission, the Securities and Exchange Commission,  
14 and the Prudential Regulators jointly find that the activi-  
15 ties of swaps dealers, securities-based swaps dealers,  
16 major swap participants, or major security-based swap  
17 participants not subject to regulation by the Commodity  
18 Futures Trading Commission, the Securities and Ex-  
19 change Commission, or a Prudential Regulator, in relation  
20 to swaps or security-based swaps that are not submitted  
21 to a derivatives clearing organization or clearing agency  
22 for clearing, have become so substantial or imprudent as  
23 to potentially threaten the stability of financial markets  
24 or the economy, the Commodity Futures Trading Commis-  
25 sion, the Securities and Exchange Commission, and the

1 Prudential Regulators shall jointly submit to the Congress  
2 a report on the situation, including recommendations as  
3 to whether the activities should be subject to further regu-  
4 lation.

5 **SEC. 4302. CAPITAL REQUIREMENTS.**

6 Each Prudential Regulator shall take into account  
7 the swaps and security-based swaps activities of the enti-  
8 ties subject to regulation by the Regulator in establishing  
9 capital requirements for the entities.

10 **SEC. 4303. CENTRALIZED CLEARING.**

11 (a) **IN GENERAL.**—The Board, in consultation and  
12 coordination with the Securities and Exchange Commis-  
13 sion and the Commodity Futures Trading Commission,  
14 shall implement policies and procedures designed to in-  
15 crease the use of central counterparties for clearing of  
16 over-the-counter swaps transactions by swap dealers, secu-  
17 rity-based swap dealers, major swap participants, and  
18 major security-based swap participants, with the goal of  
19 significantly reducing the risk profile of the market in  
20 which the transactions occur.

21 (b) **FIRM TARGETS.**—

22 (1) **IN GENERAL.**—Pursuant to subsection (a),  
23 the Board shall establish the following firm goals for  
24 swap dealers, security-based swap dealers, major  
25 swap participants, and major security-based swap

1 participants, with respect to the clearing of certain  
2 swaps:

3 (A) INTEREST RATE SWAPS.—In the case  
4 of interest rate swaps, each swap dealer, secu-  
5 rity-based swap dealer, major swap participant,  
6 and major security-based swap participant shall  
7 commit to a goal, beginning December 2009, of  
8 submitting for clearing to a derivatives clearing  
9 organization or clearing agency—

10 (i) 90 percent of new eligible trades  
11 (calculated on a notional basis);

12 (ii) 70 percent of new eligible trades  
13 (calculated on a weighted average notional  
14 basis); and

15 (iii) 60 percent of historical eligible  
16 trades (calculated on a weighted average  
17 notional basis).

18 (B) CREDIT DEFAULT SWAPS.—In the case  
19 of credit default swaps, each swap dealer, secu-  
20 rity-based swap dealer, major swap participant,  
21 and major security-based swap participant shall  
22 commit to a goal, beginning December 2009, of  
23 submitting for clearing to a derivatives clearing  
24 organization or clearing agency—

- 1 (i) 95 percent of new eligible trades  
2 (calculated on a notional basis); and  
3 (ii) 80 percent of all eligible trades  
4 (calculated on a weighted average notional  
5 basis).

6 (2) DEFINITIONS.—In paragraph (1):

7 (A) ELIGIBLE TRADE.—The term “eligible  
8 trade” means a trade on an eligible product be-  
9 tween counterparties each of whom—

10 (i) is a swap dealer, security-based  
11 swap dealer, major swap participant, or  
12 major security-based swap participant; and

13 (ii) has a clearing relationship in place  
14 with 1 or more common derivative clearing  
15 organizations or clearing agencies) for the  
16 eligible product.

17 (B) ELIGIBLE PRODUCT.—The term “eligi-  
18 ble product” means a product eligible for clear-  
19 ing by a derivative clearing organization or  
20 clearing agency.

21 (c) OTHER CONTRACTS AND COUNTERPARTIES.—

22 The Board, in consultation with the Securities and Ex-  
23 change Commission and the Commodity Futures Trading  
24 Commission, shall actively engage central counterparties  
25 and regulators globally to—

1 (1) broaden the set of derivative products eligi-  
2 ble for clearing by swap dealers, security-based swap  
3 dealers, major swap participants, and major secu-  
4 rity-based swap participants, taking into account  
5 risk, liquidity, default management and other proc-  
6 esses; and

7 (2) expand the set of counterparties eligible to  
8 clear at each eligible central counterparty taking  
9 into account appropriate counterparty risk manage-  
10 ment considerations, including the development of  
11 buy-side clearing.

12 **SEC. 4304. DEFINITIONS.**

13 The terms used in this subtitle shall have the mean-  
14 ings given the terms in section 1a of the Commodity Ex-  
15 change Act.

16 **TITLE V—CORPORATE AND FI-**  
17 **NANCIAL INSTITUTION COM-**  
18 **PENSATION FAIRNESS**

19 **SEC. 5001. SHORT TITLE.**

20 This title may be cited as the “Corporate and Finan-  
21 cial Institution Compensation Fairness Act of 2009”.

22 **SEC. 5002. SHAREHOLDER VOTE ON EXECUTIVE COM-**  
23 **PENSATION.**

24 (a) AMENDMENT TO THE SECURITIES EXCHANGE  
25 ACT OF 1934.—Section 14 of the Securities Exchange Act

1 of 1934 (15 U.S.C. 78n) is amended by adding at the end  
2 the following new subsection:

3 “(i) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON  
4 EXECUTIVE COMPENSATION.—

5 “(1) IN GENERAL.—A proxy or consent or au-  
6 thorization for an annual meeting of the share-  
7 holders (or a special meeting in lieu of the annual  
8 meeting) occurring on or after the date that is 6  
9 months after the date on which final rules are issued  
10 under paragraph (4), shall provide for a separate  
11 shareholder advisory vote, at least once every three  
12 years, to approve the registrant’s executive com-  
13 pensation policies and practices as set forth pursu-  
14 ant to the Commission’s disclosure rules. The share-  
15 holder vote shall be advisory in nature and shall not  
16 be binding on the issuer or its board of directors and  
17 shall not be construed as overruling a decision by  
18 such board, nor to create or imply any additional fi-  
19 duciary duty by such board, nor shall such vote be  
20 construed to restrict or limit the ability of share-  
21 holders to make proposals for inclusion in proxy ma-  
22 terials related to executive compensation for meet-  
23 ings of shareholders at which such an advisory vote  
24 on executive compensation is not to be conducted.

1           “(2) OPT OUT.—If not less than  $\frac{2}{3}$  of votes  
2 cast at a meeting of shareholders on a proposal to  
3 opt out of the triennial shareholder advisory vote on  
4 executive compensation required under paragraph  
5 (1) are cast in favor of such a proposal, then such  
6 shareholder advisory vote required under such para-  
7 graph shall not be required to take place for a pe-  
8 riod of 5 years following the vote approving such  
9 proposal.

10           “(3) SHAREHOLDER APPROVAL OF GOLDEN  
11 PARACHUTE COMPENSATION.—

12           “(A) DISCLOSURE.—In any proxy or con-  
13 sent solicitation material for an annual meeting  
14 of the shareholders (or a special meeting in lieu  
15 of the annual meeting) occurring on or after  
16 the date that is 6 months after the date on  
17 which final rules are issued under paragraph  
18 (4), that concerns an acquisition, merger, con-  
19 solidations, or proposed sale or other disposition  
20 of all or substantially all the assets of an issuer,  
21 the person making such solicitation shall dis-  
22 close in the proxy or consent solicitation mate-  
23 rial, in a clear and simple tabular form in ac-  
24 cordance with regulations to be promulgated by  
25 the Commission, any agreements or under-

1 standings that such person has with the named  
2 executive officers (as such term is defined in  
3 the rules promulgated by the Commission) of  
4 such issuer (or of the acquiring issuer, if such  
5 issuer is not the acquiring issuer) concerning  
6 any type of compensation (whether present, de-  
7 ferred, or contingent) that is based on or other-  
8 wise relates to the acquisition, merger, consoli-  
9 dation, sale, or other dispositions of all or sub-  
10 stantially all of the assets of the issuer, and the  
11 aggregate total of all such compensation that  
12 may (and the conditions upon which it may) be  
13 paid or become payable to or on behalf of such  
14 named executive officer.

15 “(B) SHAREHOLDER APPROVAL.—Any  
16 proxy or consent or authorization relating to  
17 the proxy or consent solicitation material con-  
18 taining the disclosure required by subparagraph  
19 (A) shall provide for a separate shareholder  
20 vote to approve such agreements or under-  
21 standings and compensation as disclosed. A  
22 vote by the shareholders shall not be binding on  
23 the corporation or the board of directors of the  
24 issuer or the person making the solicitation and  
25 shall not be construed as overruling a decision

1 by such board, nor to create or imply any addi-  
2 tional fiduciary duty by such board.”

3 “(4) RULEMAKING.—Not later than 1 year  
4 after the date of the enactment of the Corporate and  
5 Financial Institution Compensation Fairness Act of  
6 2009, the Commission shall issue rules and regula-  
7 tions to implement this subsection.”.

8 (b) STUDY AND REPORT.—The Securities and Ex-  
9 change Commission shall conduct a study and review of  
10 the results of shareholder advisory votes on executive com-  
11 pensation held pursuant to this section and the effects of  
12 such votes. Not later than 5 years after the date of enact-  
13 ment of this title, the Securities and Exchange Commis-  
14 sion shall submit a report to the Congress on the results  
15 of the study and review required by this subsection.

16 **SEC. 5003. COMPENSATION COMMITTEE INDEPENDENCE.**

17 (a) STANDARDS RELATING TO COMPENSATION COM-  
18 MITTEES.—The Securities Exchange Act of 1934 (15  
19 U.S.C. 78f) is amended by inserting after section 10A the  
20 following new section:

21 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-  
22 MITTEES.**

23 “(a) COMMISSION RULES.—

24 “(1) IN GENERAL.—Effective not later than  
25 270 days after the date of enactment of the Cor-

1       porate and Financial Institution Compensation Fair-  
2       ness Act of 2009, the Commission shall, by rule, di-  
3       rect the national securities exchanges and national  
4       securities associations to prohibit the listing of any  
5       security of an issuer that is not in compliance with  
6       the requirements of any portion of subsections (b)  
7       through (f).

8               “(2) OPPORTUNITY TO CURE DEFECTS.—The  
9       rules of the Commission under paragraph (1) shall  
10      provide for appropriate procedures for an issuer to  
11      have an opportunity to cure any defects that would  
12      be the basis for a prohibition under paragraph (1)  
13      before the imposition of such prohibition.

14              “(3) EXEMPTION AUTHORITY.—The Commis-  
15      sion may exempt certain categories of issuers from  
16      the requirements of subsections (b) through (f),  
17      where appropriate in view of the purpose of this sec-  
18      tion. In determining appropriate exemptions, the  
19      Commission shall take into account, among other  
20      considerations, the potential impact on smaller re-  
21      porting issuers.

22              “(4) NO FEDERAL PREEMPTION.—If the law of  
23      the State under which an issuer is incorporated pro-  
24      vides for a procedure for the board of directors to  
25      establish an independent compensation committee,

1       then such State law shall be controlling and nothing  
2       in this section shall preempt such State law.

3       “(b) INDEPENDENCE OF COMPENSATION COMMIT-  
4 TEES.—

5             “(1) IN GENERAL.—Each member of the com-  
6       pensation committee of the board of directors of the  
7       issuer shall be a member of the board of directors  
8       of the issuer, and shall otherwise be independent.

9             “(2) CRITERIA.—The Commission shall, by  
10       rule, establish the criteria for determining whether a  
11       director is independent for purposes of this sub-  
12       section. Such rules shall require that a member of  
13       a compensation committee of an issuer may not,  
14       other than in his or her capacity as a member of the  
15       compensation committee, the board of directors, or  
16       any other board committee—

17             “(A) accept any consulting, advisory, or  
18       other compensatory fee from the issuer; or

19             “(B) be an affiliated person of the issuer  
20       or any subsidiary thereof.

21             “(3) EXEMPTIVE AUTHORITY.—The Commis-  
22       sion may exempt from the requirements of para-  
23       graph (2) a particular relationship with respect to  
24       compensation committee members, where appro-  
25       prium in view of the purpose of this section.

1           “(4) DEFINITION.—As used in this section, the  
2           term ‘compensation committee’ means—

3                   “(A) a committee (or equivalent body) es-  
4                   tablished by and amongst the board of directors  
5                   of an issuer for the purpose of determining and  
6                   approving the compensation arrangements for  
7                   the executive officers of the issuer; and

8                   “(B) if no such committee exists with re-  
9                   spect to an issuer, the independent members of  
10                  the entire board of directors.

11          “(c) INDEPENDENCE STANDARDS FOR COMPENSA-  
12          TION CONSULTANTS AND OTHER COMMITTEE ADVI-  
13          SORS.—The charter of the compensation committee of the  
14          board of directors of an issuer shall set forth that any  
15          outside compensation consultant formally engaged or re-  
16          tained by the compensation committee shall meet stand-  
17          ards for independence to be promulgated by the Commis-  
18          sion.

19          “(d) COMPENSATION COMMITTEE AUTHORITY RE-  
20          LATING TO COMPENSATION CONSULTANTS.—

21                  “(1) IN GENERAL.—The compensation com-  
22                  mittee of each issuer, in its capacity as a committee  
23                  of the board of directors, shall have the authority,  
24                  in its sole discretion, to retain and obtain the advice  
25                  of a compensation consultant meeting the standards

1 for independence promulgated pursuant to sub-  
2 section (c), and the compensation committee shall be  
3 directly responsible for the appointment, compensa-  
4 tion, and oversight of the work of such independent  
5 compensation consultant. This provision shall not be  
6 construed to require the compensation committee to  
7 implement or act consistently with the advice or rec-  
8 ommendations of the compensation consultant, and  
9 shall not otherwise affect the compensation commit-  
10 tee's ability or obligation to exercise its own judg-  
11 ment in fulfillment of its duties.

12 “(2) DISCLOSURE.—In any proxy or consent  
13 solicitation material for an annual meeting of the  
14 shareholders (or a special meeting in lieu of the an-  
15 nual meeting) occurring on or after the date that is  
16 1 year after the date of enactment of the Corporate  
17 and Financial Institution Compensation Fairness  
18 Act of 2009, each issuer shall disclose in the proxy  
19 or consent material, in accordance with regulations  
20 to be promulgated by the Commission whether the  
21 compensation committee of the issuer retained and  
22 obtained the advice of a compensation consultant  
23 meeting the standards for independence promulgated  
24 pursuant to subsection (c).

1           “(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-  
2 SEL AND OTHER ADVISORS.—The compensation com-  
3 mittee of each issuer, in its capacity as a committee of  
4 the board of directors, shall have the authority, in its sole  
5 discretion, to retain and obtain the advice of independent  
6 counsel and other advisers meeting the standards for inde-  
7 pendence promulgated pursuant to subsection (c), and the  
8 compensation committee shall be directly responsible for  
9 the appointment, compensation, and oversight of the work  
10 of such independent counsel and other advisers. This pro-  
11 vision shall not be construed to require the compensation  
12 committee to implement or act consistently with the advice  
13 or recommendations of such independent counsel and  
14 other advisers, and shall not otherwise affect the com-  
15 pensation committee’s ability or obligation to exercise its  
16 own judgment in fulfillment of its duties.

17           “(f) FUNDING.—Each issuer shall provide for appro-  
18 priate funding, as determined by the compensation com-  
19 mittee, in its capacity as a committee of the board of direc-  
20 tors, for payment of compensation—

21           “(1) to any compensation consultant to the  
22 compensation committee that meets the standards  
23 for independence promulgated pursuant to sub-  
24 section (c); and

1           “(2) to any independent counsel or other ad-  
2           viser to the compensation committee.”.

3           (b) STUDY AND REVIEW REQUIRED.—

4           (1) IN GENERAL.—The Securities Exchange  
5           Commission shall conduct a study and review of the  
6           use of compensation consultants meeting the stand-  
7           ards for independence promulgated pursuant to sec-  
8           tion 10B(c) of the Security Exchange Act of 1934  
9           (as added by subsection (a)), and the effects of such  
10          use.

11          (2) REPORT TO CONGRESS.—Not later than 3  
12          years after the date of enactment of this title, the  
13          Commission shall submit a report to the Congress  
14          on the results of the study and review required by  
15          this paragraph.

16                   **TITLE VI—CREDIT RATING**  
17                   **AGENCIES**

18   **SEC. 6001. CHANGES TO DESIGNATION.**

19          The Securities Act of 1933 and the Securities Ex-  
20          change Act of 1934 are each amended by striking “nation-  
21          ally recognized statistical rating” each place it appears  
22          and inserting “nationally registered statistical rating”.

1 **SEC. 6002. REMOVAL OF STATUTORY REFERENCES TO**  
2 **CREDIT RATINGS.**

3 (a) FEDERAL DEPOSIT INSURANCE ACT.—The Fed-  
4 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is  
5 amended—

6 (1) in section 28(d)—

7 (A) in the subsection heading, by striking  
8 “not of investment grade”;

9 (B) in paragraph (1), by striking “not of  
10 investment grade” and inserting “that does not  
11 meet standards of credit-worthiness as estab-  
12 lished by the Corporation”;

13 (C) in paragraph (2), by striking “not of  
14 investment grade”;

15 (D) by striking paragraph (3) and redesign-  
16 ating paragraph (4) as paragraph (3); and

17 (E) in paragraph (3) (as so redesign-  
18 ated)—

19 (i) by striking subparagraph (A) and  
20 redesignating subparagraphs (B) and (C)  
21 as subparagraphs (A) and (B), respec-  
22 tively; and

23 (ii) in subparagraph (B) (as so redesi-  
24 gnated), by striking “not of investment  
25 grade” and inserting “that does not meet

1 standards of credit-worthiness as estab-  
2 lished by the Corporation”;

3 (2) in section 28(e)—

4 (A) in the subsection heading, by striking  
5 “not of investment grade”;

6 (B) in paragraph (1), by striking “not of  
7 investment grade” and inserting “that does not  
8 meet standards of credit-worthiness as estab-  
9 lished by the Corporation”; and

10 (C) in paragraphs (2) and (3), by striking  
11 “not of investment grade” each place that it ap-  
12 pears and inserting “that does not meet stand-  
13 ards of credit-worthiness established by the  
14 Corporation”; and

15 (3) in section 7(b)(1)(E)(i), by striking “credit  
16 rating entities, and other private economic” and in-  
17 serting “private economic, credit,”.

18 (b) FEDERAL HOUSING ENTERPRISES FINANCIAL  
19 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319  
20 of the Federal Housing Enterprises Financial Safety and  
21 Soundness Act of 1992 (12 U.S.C. 4519) is amended—

22 (1) in the section heading, by striking “by rat-  
23 ing organization”; and

24 (2) by striking “that is a nationally recognized  
25 statistical rating organization, as such term is de-

1        fined in section 3(a) of the Securities Exchange Act  
2        of 1934,”.

3        (c) INVESTMENT COMPANY ACT OF 1940.—Section  
4        6(a)(5)(A)(iv)(I) of the Investment Company Act of 1940  
5        (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking  
6        “is rated investment grade by not less than 1 nationally  
7        recognized statistical rating organization” and inserting  
8        “meets such standards of credit-worthiness that the Com-  
9        mission shall adopt”.

10       (d) REVISED STATUTES.—Section 5136A of title  
11       LXII of the Revised Statutes of the United States (12  
12       U.S.C. 24a) is amended—

13            (1) in subsection (a)(2)(E), by striking “any  
14            applicable rating” and inserting “standards of credit  
15            worthiness established by the Comptroller of the  
16            Currency”;

17            (2) in the heading for subsection (a)(3) by  
18            striking “rating or comparable requirement” and in-  
19            sserting “requirement”;

20            (3) in subsection (a)(3), by amending subpara-  
21            graph (A) to read as follows:

22                    “(A) IN GENERAL.—A national bank meets  
23                    the requirements of this paragraph if the bank  
24                    is one of the 100 largest insured banks and has  
25                    not fewer than 1 issue of outstanding debt that

1           meets standards of credit-worthiness or other  
2           criteria as the Secretary of the Treasury and  
3           the Board of Governors of the Federal Reserve  
4           System may jointly establish.”;

5           (4) in the heading for subsection (f), by striking  
6           “maintain public rating or” and inserting “meet  
7           standards of credit-worthiness”; and

8           (5) in subsection (f)(1), by striking “any appli-  
9           cable rating” and inserting “standards of credit-wor-  
10          thiness established by the Comptroller of the Cur-  
11          rency”.

12          (e) SECURITIES EXCHANGE ACT OF 1934.—Section  
13          3(a) Securities Exchange Act of 1934 (15 U.S.C.  
14          78a(3)(a)) is amended—

15           (1) in paragraph (41), by striking “is rated in  
16           one of the two highest rating categories by at least  
17           one nationally recognized statistical rating organiza-  
18           tion” and inserting “meets standards of credit-wor-  
19           thiness as defined by the Commission”; and

20           (2) in paragraph (53)(A), by striking “is rated  
21           in 1 of the 4 highest rating categories by at least 1  
22           nationally recognized statistical rating organization”  
23           and inserting “meets standards of credit-worthiness  
24           as defined by the Commission”.

1 (f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of  
2 the amendment in the nature of a substitute to the text  
3 of H.R. 4645, as ordered reported from the Committee  
4 on Banking, Finance and Urban Affairs on September 22,  
5 1988, as enacted into law by section 555 of Public Law  
6 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking  
7 “rating” and inserting “worthiness”.

8 (g) EFFECTIVE DATE.—The amendments made by  
9 this section shall take effect after the end of the 6-month  
10 period beginning on the date of the enactment of this title.

11 **SEC. 6003. REVIEW OF RELIANCE ON RATINGS.**

12 (a) AGENCY REVIEW.—

13 (1) REVIEW.—Not later than 1 year after the  
14 date of the enactment of this title, each Federal  
15 agency listed in paragraph (4) shall, to the extent  
16 applicable, review—

17 (A) any regulation issued by such agency  
18 that requires the use of an assessment of the  
19 credit-worthiness of a security or money market  
20 instrument; and

21 (B) any references to or requirements in  
22 such regulations regarding credit ratings.

23 (2) MODIFICATIONS REQUIRED.—Each such  
24 agency shall modify any such regulations identified  
25 by the review conducted under paragraph (1) to re-

1       move any reference to or requirement of reliance on  
2       credit ratings and to substitute in such regulations  
3       such standard of credit-worthiness as each respective  
4       agency shall determine as appropriate for such regu-  
5       lations. In making such determination, such agencies  
6       shall seek to establish, to the extent feasible, uni-  
7       form standards of credit-worthiness for use by each  
8       such agency, taking into account the entities regu-  
9       lated by each such agency and the purposes for  
10      which such entities would rely on such standards of  
11      credit-worthiness.

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

18           (4) APPLICABLE AGENCIES.—The agencies re-  
19      quired to conduct the review and report required by  
20      this subsection are—

21                   (A) the Securities and Exchange Commis-  
22                   sion;

23                   (B) the Federal Deposit Insurance Cor-  
24                   poration;

25                   (C) the Office of Thrift Supervision;

1 (D) the Office of the Comptroller of the  
2 Currency;

3 (E) the Board of Governors of the Federal  
4 Reserve;

5 (F) the National Credit Union Administra-  
6 tion; and

7 (G) the Federal Housing Finance Agency.

8 (b) GAO REVIEW OF OTHER AGENCIES.—

9 (1) REVIEW.—The Comptroller General of the  
10 United States shall conduct a comprehensive review  
11 of the use of credit ratings by Federal agencies other  
12 than those listed in subsection (a)(4), including an  
13 analysis of the provisions of law or regulation appli-  
14 cable to each such agency that refer to and require  
15 the use of credit ratings by the agency, and the poli-  
16 cies and practices of each agency with respect to  
17 credit ratings.

18 (2) REPORT.—Not later than 1 year after the  
19 date of the enactment of this title, the Comptroller  
20 General shall transmit to the Congress a report on  
21 the findings of the study conducted pursuant to  
22 paragraph (1), including recommendations for any  
23 legislation or rulemaking necessary or appropriate in  
24 order for such agencies to reduce their reliance on  
25 credit ratings.

1 **TITLE VII—GOVERNMENT-SPON-**  
2 **SORED ENTERPRISES RE-**  
3 **FORM**

4 **SEC. 7001. SHORT TITLE.**

5 This title may be cited as the “Government-Spon-  
6 sored Enterprises Free Market Reform Act of 2009”.

7 **SEC. 7002. DEFINITIONS.**

8 For purposes of this title, the following definitions  
9 shall apply:

10 (1) **CHARTER.**—The term “charter” means—

11 (A) with respect to the Federal National  
12 Mortgage Association, the Federal National  
13 Mortgage Association Charter Act (12 U.S.C.  
14 1716 et seq.); and

15 (B) with respect to the Federal Home  
16 Loan Mortgage Corporation, the Federal Home  
17 Loan Mortgage Corporation Act (12 U.S.C.  
18 1451 et seq.).

19 (2) **DIRECTOR.**—The term “Director” means  
20 the Director of the Federal Housing Finance Agen-  
21 cy.

22 (3) **ENTERPRISE.**—The term “enterprise”  
23 means—

24 (A) the Federal National Mortgage Asso-  
25 ciation; and

1 (B) the Federal Home Loan Mortgage  
2 Corporation.

3 (4) GUARANTEE.—The term “guarantee”  
4 means, with respect to an enterprise, the credit sup-  
5 port of the enterprise that is provided by the Fed-  
6 eral Government through its charter as a Govern-  
7 ment-sponsored enterprise.

8 **SEC. 7003. TERMINATION OF CURRENT CONSERVATORSHIP.**

9 (a) IN GENERAL.—Upon the expiration of the period  
10 referred to in subsection (b), the Director of the Federal  
11 Housing Finance Agency shall determine, with respect to  
12 each enterprise, if the enterprise is financially viable at  
13 that time and—

14 (1) if the Director determines that the enter-  
15 prise is financially viable, immediately take all ac-  
16 tions necessary to terminate the conservatorship for  
17 each of the enterprises; or

18 (2) if the Director determines that the enter-  
19 prise is not financially viable, immediately appoint  
20 the Federal Housing Finance Agency as receiver  
21 under section 1367 of the Federal Housing Enter-  
22 prises Financial Safety and Soundness Act of 1992  
23 and carry out such receivership under the authority  
24 of such section.

1 (b) TIMING.—The period referred to in this sub-  
2 section is, with respect to an enterprise—

3 (1) except as provided in paragraph (2), the 24-  
4 month period beginning upon the date of the enact-  
5 ment of this title; or

6 (2) if the Director determines before the expira-  
7 tion of the period referred to in paragraph (1) that  
8 the financial markets would be adversely affected  
9 without the extension of such period under this  
10 paragraph with respect to that enterprise, the 30-  
11 month period beginning upon the date of the enact-  
12 ment of this title.

13 (c) FINANCIAL VIABILITY.—The Director may not  
14 determine that an enterprise is financially viable for pur-  
15 poses of subsection (a) if the Director determines that any  
16 of the conditions for receivership set forth in paragraph  
17 (3) or (4) of section 1367(a) of the Federal Housing En-  
18 terprises Financial Safety and Soundness Act of 1992 (12  
19 U.S.C. 4617(a)) exists at the time with respect to the en-  
20 terprise.

21 **SEC. 7004. LIMITATION OF ENTERPRISE AUTHORITY UPON**  
22 **EMERGENCE FROM CONSERVATORSHIP.**

23 (a) REVISED AUTHORITY.—Upon the expiration of  
24 the period referred to in section 7003(b), if the Director

1 makes the determination under section 7003(a)(1), the  
2 following provisions shall take effect:

3 (1) **PORTFOLIO LIMITATIONS.**—Subtitle B of  
4 title XIII of the Housing and Community Develop-  
5 ment Act of 1992 (12 U.S.C. 4611 et seq.) is  
6 amended by adding at the end the following new sec-  
7 tion:

8 **“SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF EN-**  
9 **TERPRISES.**

10 **“(a) RESTRICTION.**—No enterprise shall own, as of  
11 any applicable date in this subsection or thereafter, mort-  
12 gage assets in excess of—

13 **“(1)** upon the expiration of the period referred  
14 to in section 7003(b) of the Government-Sponsored  
15 Enterprises Free Market Reform Act of 2009,  
16 \$850,000,000,000; or

17 **“(2)** on December 31 of each year thereafter,  
18 80.0 percent of the aggregate amount of mortgage  
19 assets of the enterprise as of December 31 of the  
20 immediately preceding calendar year;

21 except that in no event shall an enterprise be required  
22 under this section to own less than \$250,000,000,000 in  
23 mortgage assets.

24 **“(b) DEFINITION OF MORTGAGE ASSETS.**—For pur-  
25 poses of this section, the term ‘mortgage assets’ means,

1 with respect to an enterprise, assets of such enterprise  
2 consisting of mortgages, mortgage loans, mortgage-related  
3 securities, participation certificates, mortgage-backed  
4 commercial paper, obligations of real estate mortgage in-  
5 vestment conduits and similar assets, in each case to the  
6 extent such assets would appear on the balance sheet of  
7 such enterprise in accordance with generally accepted ac-  
8 counting principles in effect in the United States as of  
9 September 7, 2008 (as set forth in the opinions and pro-  
10 nouncements of the Accounting Principles Board and the  
11 American Institute of Certified Public Accountants and  
12 statements and pronouncements of the Financial Account-  
13 ing Standards Board from time to time; and without giv-  
14 ing any effect to any change that may be made after Sep-  
15 tember 7, 2008, in respect of Statement of Financial Ac-  
16 counting Standards No. 140 or any similar accounting  
17 standard).”.

18           (2) INCREASE IN MINIMUM CAPITAL REQUIRE-  
19           MENT.—Section 1362 of the Federal Housing En-  
20           terprises Financial Safety and Soundness Act of  
21           1992 (12 U.S.C. 4612), as amended by section 1111  
22           of the Housing and Economic Recovery Act of 2008  
23           (Public Law 110–289), is amended—

24                   (A) in subsection (a), by striking “For  
25                   purposes of this subtitle, the minimum capital

1 level for each enterprise shall be” and inserting  
2 “The minimum capital level established under  
3 subsection (g) for each enterprise may not be  
4 lower than”;

5 (B) in subsection (c)—

6 (i) by striking “subsections (a) and”  
7 and inserting “subsection”;

8 (ii) by striking “regulated entities”  
9 the first place such term appears and in-  
10 sserting “Federal Home Loan Banks”;

11 (iii) by striking “for the enterprises,”;

12 (iv) by striking “, or for both the en-  
13 terprises and the banks,”;

14 (v) by striking “the level specified in  
15 subsection (a) for the enterprises or”;

16 (vi) by striking “the regulated entities  
17 operate” and inserting “such banks oper-  
18 ate”;

19 (C) in subsection (d)(1)—

20 (i) by striking “subsections (a) and”  
21 and inserting “subsection”; and

22 (ii) by striking “regulated entity”  
23 each place such term appears and inserting  
24 “Federal home loan bank”;

1 (D) in subsection (e), by striking “regu-  
2 lated entity” each place such term appears and  
3 inserting “Federal home loan bank”;

4 (E) in subsection (f)—

5 (i) by striking “the amount of core  
6 capital maintained by the enterprises,”;  
7 and

8 (ii) by striking “regulated entities”  
9 and inserting “banks”; and

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

12 “(g) ESTABLISHMENT OF REVISED MINIMUM CAP-  
13 ITAL LEVELS.—

14 “(1) IN GENERAL.—The Director shall cause  
15 the enterprises to achieve and maintain adequate  
16 capital by establishing minimum levels of capital for  
17 the enterprises and by using such other methods as  
18 the Director deems appropriate.

19 “(2) AUTHORITY.—The Director shall have the  
20 authority to establish such minimum level of capital  
21 for an enterprise in excess of the level specified  
22 under subsection (a) as the Director, in the Direc-  
23 tor’s discretion, deems to be necessary or appro-  
24 priate in light of the particular circumstances of the  
25 enterprise.

1       “(h) FAILURE TO MAINTAIN REVISED MINIMUM  
2 CAPITAL LEVELS.—

3               “(1) UNSAFE AND UNSOUND PRACTICE OR CON-  
4 DITION.—Failure of an enterprise to maintain cap-  
5 ital at or above its minimum level as established  
6 pursuant to subsection (c) of this section may be  
7 deemed by the Director, in his discretion, to con-  
8 stitute an unsafe and unsound practice or condition  
9 within the meaning of this title.

10              “(2) DIRECTIVE TO ACHIEVE CAPITAL  
11 LEVEL.—

12                      “(A) AUTHORITY.—In addition to, or in  
13 lieu of, any other action authorized by law, in-  
14 cluding paragraph (1), the Director may issue  
15 a directive to an enterprise that fails to main-  
16 tain capital at or above its required level as es-  
17 tablished pursuant to subsection (c) of this sec-  
18 tion.

19                      “(B) PLAN.—Such directive may require  
20 the enterprise to submit and adhere to a plan  
21 acceptable to the Director describing the means  
22 and timing by which the enterprise shall achieve  
23 its required capital level.

24                      “(C) ENFORCEMENT.—Any such directive  
25 issued pursuant to this paragraph, including

1 plans submitted pursuant thereto, shall be en-  
2 forceable under the provisions of subtitle C of  
3 this title to the same extent as an effective and  
4 outstanding order issued pursuant to subtitle C  
5 of this title which has become final.

6 “(3) ADHERENCE TO PLAN.—

7 “(A) CONSIDERATION.—The Director may  
8 consider such enterprise’s progress in adhering  
9 to any plan required under this subsection  
10 whenever such enterprise seeks the requisite ap-  
11 proval of the Director for any proposal which  
12 would divert earnings, diminish capital, or oth-  
13 erwise impede such enterprise’s progress in  
14 achieving its minimum capital level.

15 “(B) DENIAL.—The Director may deny  
16 such approval where it determines that such  
17 proposal would adversely affect the ability of  
18 the enterprise to comply with such plan.”.

19 (3) REPEAL OF INCREASES TO CONFORMING  
20 LOAN LIMITS.—

21 (A) REPEAL OF TEMPORARY INCREASES.—

22 (i) ECONOMIC STIMULUS ACT OF  
23 2008.—Section 201 of the Economic Stim-  
24 ulus Act of 2008 (Public Law 110–185) is  
25 hereby repealed.

1 (ii) AMERICAN RECOVERY AND REIN-  
2 VESTMENT ACT OF 2009.—Section 1203 of  
3 division A of the American Recovery and  
4 Reinvestment Act of 2009 (Public Law  
5 111–5; 123 Stat. 225) is hereby repealed.

6 (B) REPEAL OF GENERAL LIMIT AND PER-  
7 MANENT HIGH-COST AREA INCREASE.—Para-  
8 graph (2) of section 302(b) of the Federal Na-  
9 tional Mortgage Association Charter Act (12  
10 U.S.C. 1717(b)(2)) and paragraph (2) of sec-  
11 tion 305(a) of the Federal Home Loan Mort-  
12 gage Corporation Act (12 U.S.C. 1454(a)(2))  
13 are each amended to read as such sections were  
14 in effect immediately before the enactment of  
15 the Housing and Economic Recovery Act of  
16 2008 (Public Law 110–289).

17 (C) REPEAL OF NEW HOUSING PRICE  
18 INDEX.—Section 1322 of the Federal Housing  
19 Enterprises Financial Safety and Soundness  
20 Act of 1992, as added by section 1124(d) of the  
21 Housing and Economic Recovery Act of 2008  
22 (Public Law 110–289), is hereby repealed.

23 (D) REPEAL.—Section 1124 of the Hous-  
24 ing and Economic Recovery Act of 2008 (Public  
25 Law 110–289) is hereby repealed.

1                   (E) ESTABLISHMENT OF CONFORMING  
2 LOAN LIMIT.—For the year in which the expira-  
3 tion of the period referred to in section 7003(b)  
4 of this section occurs, the limitations governing  
5 the maximum original principal obligation of  
6 conventional mortgages that may be purchased  
7 by the Federal National Mortgage Association  
8 and the Federal Home Loan Mortgage Cor-  
9 poration, referred to in section 302(b)(2) of the  
10 Federal National Mortgage Association Charter  
11 Act (12 U.S.C. 1717(b)(2)) and section  
12 305(a)(2) of the Federal Home Loan Mortgage  
13 Corporation Act (12 U.S.C. 1454(a)(2)), re-  
14 spectively, shall be considered to be—

15                   (i) \$417,000 for a mortgage secured  
16                   by a single-family residence,

17                   (ii) \$533,850 for a mortgage secured  
18                   by a 2-family residence,

19                   (iii) \$645,300 for a mortgage secured  
20                   by a 3-family residence, and

21                   (iv) \$801,950 for a mortgage secured  
22                   by a 4-family residence,

23                   and such limits shall be adjusted effective each  
24                   January 1 thereafter in accordance with such  
25                   sections 302(b)(2) and 305(a)(2).

1 (F) PROHIBITION OF PURCHASE OF MORT-  
2 GAGES EXCEEDING MEDIAN AREA HOME  
3 PRICE.—

4 (i) FANNIE MAE.—Section 302(b)(2)  
5 of the Federal National Mortgage Associa-  
6 tion Charter Act (12 U.S.C. 1717(b)(2)) is  
7 amended by adding at the end the fol-  
8 lowing new sentence: “Notwithstanding  
9 any other provision of this title, the cor-  
10 poration may not purchase any mortgage  
11 for a property having a principal obligation  
12 that exceeds the median home price, for  
13 properties of the same size, for the area in  
14 which such property subject to the mort-  
15 gage is located.”.

16 (ii) FREDDIE MAC.—Section  
17 305(a)(2) of the Federal Home Loan  
18 Mortgage Corporation Act (12 U.S.C.  
19 1454(a)(2)) is amended by adding at the  
20 end the following new sentence: “Notwith-  
21 standing any other provision of this title,  
22 the Corporation may not purchase any  
23 mortgage for a property having a principal  
24 obligation that exceeds the median home  
25 price, for properties of the same size, for

1           the area in which such property subject to  
2           the mortgage is located.”.

3           (4) REQUIREMENT TO PAY STATE AND LOCAL  
4 TAXES.—

5           (A) FANNIE MAE.—Paragraph (2) of sec-  
6 tion 309(c) of the Federal National Mortgage  
7 Association Charter Act (12 U.S.C.  
8 1723a(c)(2)) is amended—

9                   (i) by striking “shall be exempt from”  
10                   and inserting “shall be subject to”; and

11                   (ii) by striking “except that any” and  
12                   inserting “and any”.

13           (B) FREDDIE MAC.—Section 303(e) of the  
14 Federal Home Loan Mortgage Corporation Act  
15 (12 U.S.C. 1452(e)) is amended—

16                   (i) by striking “shall be exempt from”  
17                   and inserting “shall be subject to”; and

18                   (ii) by striking “except that any” and  
19                   inserting “and any”.

20           (5) REPEALS RELATING TO REGISTRATION OF  
21 SECURITIES.—

22           (A) FANNIE MAE.—

23                   (i) MORTGAGE-BACKED SECURI-  
24 TIES.—Section 304(d) of the Federal Na-  
25 tional Mortgage Association Charter Act

1 (12 U.S.C. 1719(d)) is amended by strik-  
2 ing the fourth sentence.

3 (ii) SUBORDINATE OBLIGATIONS.—  
4 Section 304(e) of the Federal National  
5 Mortgage Association Charter Act (12  
6 U.S.C. 1719(e)) is amended by striking the  
7 fourth sentence.

8 (B) FREDDIE MAC.—Section 306 of the  
9 Federal Home Loan Mortgage Corporation Act  
10 (12 U.S.C. 1455) is amended by striking sub-  
11 section (g).

12 (6) RECOUPMENT OF COSTS FOR FEDERAL  
13 GUARANTEE.—

14 (A) ASSESSMENTS.—The Director of the  
15 Federal Housing Finance Agency shall establish  
16 and collect from each enterprise assessments in  
17 the amount determined under subparagraph  
18 (B). In determining the method and timing for  
19 making such assessments, the Director shall  
20 take into consideration the determinations and  
21 conclusions of the study under subsection (b) of  
22 this section.

23 (B) DETERMINATION OF COSTS OF GUAR-  
24 ANTEE.—Assessments under subparagraph (A)  
25 with respect to an enterprise shall be in such

1 amount as the Director determines necessary to  
2 recoup to the Federal Government the full value  
3 of the benefit the enterprise receives from the  
4 guarantee provided by the Federal Government  
5 for the obligations and financial viability of the  
6 enterprise, based upon the dollar value of such  
7 benefit in the market to such enterprise when  
8 not operating under conservatorship or receiver-  
9 ship. To determine such amount, the Director  
10 shall establish a risk-based pricing mechanism  
11 as the Director considers appropriate, taking  
12 into consideration the determinations and con-  
13 clusions of the study under subsection (b) of  
14 this section.

15 (C) TREATMENT OF RECOUPED  
16 AMOUNTS.—The Director shall cover into the  
17 general fund of the Treasury any amounts re-  
18 ceived from assessments made under this para-  
19 graph.

20 (b) GAO STUDY REGARDING RECOUPMENT OF  
21 COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The  
22 Comptroller General of the United States shall conduct  
23 a study to determine a risk-based pricing mechanism to  
24 accurately determine the value of the benefit the enter-  
25 prises receive from the guarantee provided by the Federal

1 Government for the obligations and financial viability of  
2 the enterprises. Such study shall establish a dollar value  
3 of such benefit in the market to each enterprise when not  
4 operating under conservatorship or receivership, shall ana-  
5 lyze various methods of the Federal Government assessing  
6 a charge for such value received (including methods involv-  
7 ing an annual fee or a fee for each mortgage purchased  
8 or securitized), and shall make a recommendation of the  
9 best such method for assessing such charge. Not later  
10 than 12 months after the date of the enactment of this  
11 title, the Comptroller General shall submit to the Congress  
12 a report setting forth the determinations and conclusions  
13 of such study.

14 **SEC. 7005. REQUIREMENT TO PERIODICALLY RENEW CHAR-**  
15 **TER UNTIL WIND DOWN AND DISSOLUTION.**

16 (a) **REQUIRED RENEWAL; WIND DOWN AND DIS-**  
17 **SOLUTION UPON NON-RENEWAL.**—Upon the expiration of  
18 the 3-year period that begins upon the expiration of the  
19 period referred to in section 7003(b), unless the charter  
20 of an enterprise is renewed pursuant to subsection (b) of  
21 this section, section 7006 (relating to wind down of oper-  
22 ations and dissolution of enterprise) shall apply to the en-  
23 terprise.

24 (b) **RENEWAL PROCEDURE.**—

1           (1) APPLICATION; TIMING.—The Director shall  
2           provide for each enterprise to apply to the Director,  
3           before the expiration of the 3-year period under sub-  
4           section (a), for renewal of the charter of the enter-  
5           prise.

6           (2) STANDARD.—The Director shall approve  
7           the application of an enterprise for the renewal of  
8           the charter of the enterprise if—

9                   (A) the application includes a certification  
10                  by the enterprise that the enterprise is finan-  
11                  cially sound and is complying with all provisions  
12                  of, and amendments made by, section 7004 of  
13                  this title applicable to such enterprise; and

14                   (B) the Director verifies that the certifi-  
15                  cation made pursuant to subparagraph (A) is  
16                  accurate.

17           (c) OPTION TO REAPPLY.—Nothing in this section  
18           may be construed to require an enterprise to apply under  
19           this section for renewal of the charter of the enterprise.

20   **SEC. 7006. REQUIRED WIND DOWN OF OPERATIONS AND**  
21                   **DISSOLUTION OF ENTERPRISE.**

22           (a) APPLICABILITY.—This section shall apply to an  
23           enterprise—

1           (1) upon the expiration of the 3-year period re-  
2           ferred to in such section 7005(a), to the extent pro-  
3           vided in such section; and

4           (2) if this section has not previously applied to  
5           the enterprise, upon the expiration of the 6-year pe-  
6           riod that begins upon the expiration of the period re-  
7           ferred to in section 7003(b).

8           (b) WIND DOWN.—Upon the applicability of this sec-  
9           tion to an enterprise, the Director and the Secretary of  
10          the Treasury shall jointly take such action, and may pre-  
11          scribe such regulations and procedures, as may be nec-  
12          essary to wind down the operations of an enterprise as  
13          an entity chartered by the United States Government over  
14          the duration of the 10-year period beginning upon the ap-  
15          plicability of this section to the enterprise (pursuant to  
16          subsection (a)) in an orderly manner consistent with this  
17          title and the ongoing obligations of the enterprise.

18          (c) DIVISION OF ASSETS AND LIABILITIES; AUTHOR-  
19          ITY TO ESTABLISH HOLDING CORPORATION AND DIS-  
20          SOLUTION TRUST FUND.—The action and procedures re-  
21          quired under subsection (b)—

22                (1) shall include the establishment and execu-  
23                tion of plans to provide for an equitable division and  
24                distribution of assets and liabilities of the enterprise,  
25                including any liability of the enterprise to the United

1 States Government or a Federal reserve bank that  
2 may continue after the end of the period described  
3 in subsection (b); and

4 (2) may provide for establishment of—

5 (A) a holding corporation organized under  
6 the laws of any State of the United States or  
7 the District of Columbia for the purposes of the  
8 reorganization and restructuring of the enter-  
9 prise; and

10 (B) one or more trusts to which to trans-  
11 fer—

12 (i) remaining debt obligations of the  
13 enterprise, for the benefit of holders of  
14 such remaining obligations; or

15 (ii) remaining mortgages held for the  
16 purpose of backing mortgage-backed secu-  
17 rities, for the benefit of holders of such re-  
18 maining securities.

19 (d) REPEAL OF CHARTER.—Effective upon the expi-  
20 ration of the 10-year period referred to in subsection (b)  
21 for an enterprise, the charter for the enterprise is re-  
22 pealed, except that the provisions of such charter in effect  
23 immediately before such repeal shall continue to apply  
24 with respect to the rights and obligations of any holders

1 of outstanding debt obligations and mortgage-backed secu-  
2 rities of the enterprise.

3 **TITLE VIII—FEDERAL**  
4 **INSURANCE OFFICE**

5 **SEC. 8001. SHORT TITLE.**

6 This title may be cited as the “Federal Insurance Of-  
7 fice Act of 2009”.

8 **SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.**

9 (a) **ESTABLISHMENT OF OFFICE.**—Subchapter I of  
10 chapter 3 of title 31, United States Code, is amended—

11 (1) by transferring and inserting section 312  
12 after section 313;

13 (2) by redesignating sections 313 and 312 (as  
14 so transferred) as sections 312 and 315, respec-  
15 tively; and

16 (3) by inserting after section 312 (as so reded-  
17 igned) the following new sections:

18 **“SEC. 313. FEDERAL INSURANCE OFFICE.**

19 **“(a) ESTABLISHMENT OF OFFICE.**—There is estab-  
20 lished the Federal Insurance Office as an office in the De-  
21 partment of the Treasury.

22 **“(b) LEADERSHIP.**—The Office shall be headed by a  
23 Director, who shall be appointed by the Secretary of the  
24 Treasury. The position of such Director shall be a career  
25 reserved position in the Senior Executive Service.

1 “(c) FUNCTIONS.—

2 “(1) AUTHORITY PURSUANT TO DIRECTION OF  
3 SECRETARY.—The Office shall have the authority,  
4 pursuant to the direction of the Secretary, as fol-  
5 lows:

6 “(A) To monitor the insurance industry to  
7 gain expertise.

8 “(B) To identify issues or gaps in the reg-  
9 ulation of insurers that could contribute to a  
10 systemic crisis in the insurance industry or the  
11 United States financial system.

12 “(C) To recommend for review by the Mar-  
13 ket Stability and Capital Adequacy Board any  
14 activities or practices by insurers or their affili-  
15 ates that may be exacerbating systemic risk.

16 “(D) To assist the Secretary in admin-  
17 istering the Terrorism Insurance Program es-  
18 tablished in the Department of the Treasury  
19 under the Terrorism Risk Insurance Act of  
20 2002 (15 U.S.C. 6701 note).

21 “(E) To coordinate Federal efforts and de-  
22 velop Federal policy on prudential aspects of  
23 international insurance matters, including rep-  
24 resenting the United States as appropriate in  
25 the International Association of Insurance Su-

1           pervisors or any successor organization and as-  
2           sisting the Secretary in negotiating covered  
3           agreements.

4           “(F) To determine, in accordance with  
5           subsection (f), whether State insurance meas-  
6           ures are preempted by covered agreements.

7           “(G) To consult with the States regarding  
8           insurance matters of national importance and  
9           prudential insurance matters of international  
10          importance.

11          “(H) To perform such other related duties  
12          and authorities as may be assigned to it by the  
13          Secretary.

14          “(2) ADVISORY FUNCTIONS.—The Office shall  
15          advise the Secretary on major domestic and pruden-  
16          tial international insurance policy issues.

17          “(d) SCOPE.—The authority of the Office shall ex-  
18          tend to all lines of insurance except health insurance, as  
19          determined by the Secretary based on section 2791 of the  
20          Public Health Service Act (42 U.S.C. 300gg-91).

21          “(e) GATHERING OF INFORMATION.—

22                 “(1) GENERAL.—In carrying out its functions  
23                 under subsection (c), the Office may request, receive,  
24                 and collect data and information on and from the in-  
25                 surance industry and insurers, enter into informa-

1       tion-sharing agreements, analyze and disseminate  
2       data and information, and issue reports regarding  
3       all lines of insurance except health insurance.

4           “(2) COLLECTION OF INFORMATION FROM IN-  
5       SURERS AND AFFILIATES.—Except as provided in  
6       paragraph (3) and subject to paragraph (4), the Of-  
7       fice may require an insurer, or affiliate of an in-  
8       surer, to submit such data or information that the  
9       Office may reasonably require in carrying out its  
10      functions under subsection (c). Notwithstanding sub-  
11     section (p) and for the purposes of this paragraph  
12     only, the term ‘insurer’ means any entity that is au-  
13     thorized to write insurance or reinsure risks and  
14     issue contracts or policies in one or more States.

15           “(3) EXCEPTION FOR SMALL INSURERS.—Para-  
16     graph (2) shall not apply with respect to any insurer  
17     or affiliate thereof that meets a minimum size  
18     threshold that may be established by the Office by  
19     order or rule. Such threshold shall be appropriate to  
20     the particular request and need for the data or in-  
21     formation.

22           “(4) ADVANCE COORDINATION.—Before col-  
23     lecting any data or information under paragraph (2)  
24     from an insurer, or affiliate of an insurer, the Office  
25     shall coordinate with each relevant Federal agency

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

1 agency is authorized to provide to the Office such  
2 data or information.

3 “(5) CONFIDENTIALITY.—

4 “(A) The submission of any non-publicly  
5 available data and information to the Office  
6 under this subsection shall not constitute a  
7 waiver of, or otherwise affect, any privilege aris-  
8 ing under Federal or State law (including the  
9 rules of any Federal or State Court) to which  
10 the data or information is otherwise subject.

11 “(B) Any requirement under Federal or  
12 State law to the extent otherwise applicable, or  
13 any requirement pursuant to a written agree-  
14 ment in effect between the original source of  
15 any non-publicly available data or information  
16 and the source of such data or information to  
17 the Office, regarding the privacy or confiden-  
18 tiality of any data or information in the posses-  
19 sion of the source to the Office, shall continue  
20 to apply to such data or information after the  
21 data or information has been provided pursuant  
22 to this subsection to the Office.

23 “(C) Any data or information obtained by  
24 the Office may be made available to State in-  
25 surance regulators individually or collectively

1 through an information sharing agreement that  
2 shall comply with applicable Federal law and  
3 that shall not constitute a waiver of, or other-  
4 wise affect, any privilege under Federal or  
5 State law (including the rules of any Federal or  
6 State Court) to which the data or information  
7 is otherwise subject.

8 “(D) Section 552 of title 5, United States  
9 Code, shall apply to any data or information  
10 submitted by an insurer or affiliate of an in-  
11 surer.

12 “(f) PREEMPTION OF STATE INSURANCE MEAS-  
13 URES.—

14 “(1) STANDARD.—A State insurance measure  
15 shall be preempted pursuant to this section or sec-  
16 tion 314 if, and only to the extent that the Director  
17 determines, in accordance with this subsection, that  
18 the measure—

19 “(A) directly results in less favorable treat-  
20 ment of a non-United States insurer domiciled  
21 in a foreign jurisdiction that is subject to a cov-  
22 ered agreement than a United States insurer  
23 domiciled, licensed, admitted, or otherwise au-  
24 thorized in that State; and

1           “(B) is inconsistent with a covered agree-  
2           ment that is entered into on a date after the  
3           date of the enactment of this Act.

4           “(2) DETERMINATION.—

5           “(A) NOTICE OF POTENTIAL INCONSIST-  
6           ENCY.—Before making any determination of in-  
7           consistency, the Director shall—

8                   “(i) notify and consult with the appro-  
9                   priate State regarding any potential incon-  
10                  sistency or preemption;

11                   “(ii) notify and consult with the  
12                  United States Trade Representative re-  
13                  garding any potential inconsistency or pre-  
14                  emption;

15                   “(iii) cause to be published in the  
16                  Federal Register notice of the issue re-  
17                  garding the potential inconsistency or pre-  
18                  emption, including a description of each  
19                  State insurance measure at issue and any  
20                  applicable covered agreement;

21                   “(iv) provide interested parties a rea-  
22                  sonable opportunity to submit written com-  
23                  ments to the Office;

24                   “(v) consider the effect of preemption  
25                  on—

1 “(I) the protection of policy-  
2 holders and policy claimants;

3 “(II) the maintenance of the  
4 safety, soundness, integrity, and fi-  
5 nancial responsibility of any entity in-  
6 volved in the business of insurance or  
7 insurance operations;

8 “(III) ensuring the integrity and  
9 stability of the United States financial  
10 system; and

11 “(IV) the creation of a gap or  
12 void in financial or market conduct  
13 regulation of any entity involved in  
14 the business of insurance or insurance  
15 operations in the United States; and

16 “(vi) consider any comments received.

17 The Director shall provide the notifications re-  
18 quired under clauses (i), (ii), and (iii) contem-  
19 poraneously.

20 “(B) SCOPE OF REVIEW.—For purposes of  
21 this section, the Director’s determination of  
22 State insurance measures shall be limited to the  
23 subject matter of the prudential measures ap-  
24 plicable to the business of insurance contained  
25 within the covered agreement involved.

1           “(C) NOTICE OF DETERMINATION OF IN-  
2           CONSISTENCY.—Upon making any determina-  
3           tion of inconsistency, the Director shall—

4                   “(i) notify the appropriate State of  
5                   the determination and the extent of the in-  
6                   consistency;

7                   “(ii) establish a reasonable period of  
8                   time, which shall not be shorter than 90  
9                   days, before the determination shall be-  
10                  come effective; and

11                  “(iii) notify the Committee on Finan-  
12                  cial Services of the House of Representa-  
13                  tives and the Committee on Banking,  
14                  Housing, and Urban Affairs of the Senate  
15                  of the inconsistency.

16           “(3) NOTICE OF EFFECTIVENESS.—Upon the  
17           conclusion of the period referred to in paragraph  
18           (2)(C)(ii), if the basis for the determination of in-  
19           consistency still exists, the determination shall be-  
20           come effective and the Director shall—

21                   “(A) cause to be published notice in the  
22                   Federal Register that the preemption has be-  
23                   come effective, as well as the effective date; and

24                   “(B) notify the appropriate State.

1           “(4) LIMITATION.—No State may enforce a  
2           State insurance measure to the extent that it has  
3           been preempted under this subsection.

4           “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-  
5           DURE ACT.—Determinations of inconsistency pursuant to  
6           subsection (f)(2) shall be subject to the applicable provi-  
7           sions of subchapter II of chapter 5 of title 5, United  
8           States Code (relating to administrative procedure), and  
9           chapter 7 of such title (relating to judicial review), except  
10          that in any action for judicial review of a determination  
11          of inconsistency, the court shall determine the matter de  
12          novo.

13          “(h) REGULATIONS, POLICIES, AND PROCEDURES.—  
14          The Secretary may issue orders, regulations, policies and  
15          procedures to implement this section.

16          “(i) CONSULTATION.—The Director shall consult  
17          with State insurance regulators, individually and collec-  
18          tively, to the extent the Director determines appropriate,  
19          in carrying out the functions of the Office.

20          “(j) SAVINGS PROVISIONS.—Nothing in this section  
21          shall—

22                 “(1) preempt any State insurance measure that  
23                 governs any insurer’s rates, premiums, underwriting  
24                 or sales practices, or State coverage requirements

1 for insurance, or to the application of the antitrust  
2 laws of any State to the business of insurance;

3 “(2) preempt any State insurance measure gov-  
4 erning the capital or solvency of an insurer, except  
5 to the extent that such State insurance measure di-  
6 rectly results in less favorable treatment of a non-  
7 United States insurer than a United States insurer;

8 “(3) be construed to alter, amend, or limit the  
9 responsibility of any department or agency of the  
10 Federal Government to issue regulations under the  
11 Truth in Lending Act (15 U.S.C. 1601 et seq.) or  
12 any other Federal law regulating the provision of  
13 consumer financial products or services;

14 “(4) preempt any State insurance measure be-  
15 cause of inconsistency with any agreement that is  
16 not a covered agreement (as such term is defined in  
17 subsection (p)); or

18 “(5) affect the preemption of any State insur-  
19 ance measure otherwise inconsistent with and pre-  
20 empted by Federal law.

21 “(k) RETENTION OF EXISTING STATE REGULATORY  
22 AUTHORITY.—Nothing in this section or section 314 shall  
23 be construed to establish a general supervisory or regu-  
24 latory authority of the Office or the Department of the  
25 Treasury over the business of insurance.

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

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

19       “(n) REPORTS TO CONGRESS.—

20               “(1) ANNUAL REPORT.—Beginning September  
21       30, 2011, the Director shall submit a report on or  
22       before September 30 of each calendar year to the  
23       President and to the Committees on Financial Serv-  
24       ices and Ways and Means of the House of Rep-  
25       resentatives and the Committees on Banking, Hous-

1 ing, and Urban Affairs and Finance of the Senate  
2 on the insurance industry, any actions taken by the  
3 office pursuant to subsection (f) (regarding preemp-  
4 tion of inconsistent State insurance measures).

5 “(2) OTHER REPORTS.—The Director shall sub-  
6 mit to the President and the Committees referred to  
7 in paragraph (1) any other information or reports as  
8 deemed relevant by the Director or as requested by  
9 the Chairman or Ranking Member of any of such  
10 Committees.

11 “(o) USE OF EXISTING RESOURCES.—To carry out  
12 this section, the Office may employ personnel, facilities,  
13 and other Department of the Treasury resources available  
14 to the Secretary and the Secretary shall dedicate specific  
15 personnel to the Office.

16 “(p) DEFINITIONS.—For purposes of this section and  
17 section 314, the following definitions shall apply:

18 “(1) AFFILIATE.—The term ‘affiliate’ means,  
19 with respect to an insurer, any person that controls,  
20 is controlled by, or is under common control with the  
21 insurer.

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

1           “(A) is entered into between the United  
2 States and one or more foreign governments,  
3 authorities, or regulatory entities; and

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

11           “(3) DETERMINATION OF INCONSISTENCY.—  
12 The term ‘determination of inconsistency’ means a  
13 determination that a State insurance measure is pre-  
14 empted under subsection (f).

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

1           “(5) INSURER.—The term ‘insurer’ means any  
2           person engaged in the business of insurance, includ-  
3           ing reinsurance.

4           “(6) NON-UNITED STATES INSURER.—The term  
5           ‘non-United States insurer’ means an insurer that is  
6           organized under the laws of a jurisdiction other than  
7           a State, but does not include any United States  
8           branch of such an insurer.

9           “(7) OFFICE.—The term ‘Office’ means the  
10          Federal Insurance Office established by this section.

11          “(8) SECRETARY.—The term ‘Secretary’ means  
12          the Secretary of the Treasury.

13          “(9) STATE.—The term ‘State’ means any  
14          State, commonwealth, territory, or possession of the  
15          United States, the District of Columbia, the Com-  
16          monwealth of Puerto Rico, the Commonwealth of the  
17          Northern Mariana Islands, American Samoa, Guam,  
18          or the United States Virgin Islands.

19          “(10) STATE INSURANCE MEASURE.—The term  
20          ‘State insurance measure’ means any State law, reg-  
21          ulation, administrative ruling, bulletin, guideline, or  
22          practice relating to or affecting prudential measures  
23          applicable to insurance or reinsurance.

24          “(11) STATE INSURANCE REGULATOR.—The  
25          term ‘State insurance regulator’ means any State

1 regulatory authority responsible for the supervision  
2 of insurers.

3 “(12) UNITED STATES INSURER.—The term  
4 ‘United States insurer’ means—

5 “(A) an insurer that is organized under  
6 the laws of a State; or

7 “(B) a United States branch of a non-  
8 United States insurer.

9 “(q) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated for the Office such sums  
11 as may be necessary for each fiscal year.

12 **“SEC. 314. COVERED AGREEMENTS.**

13 “(a) AUTHORITY.—The Secretary and the United  
14 States Trade Representative are authorized, jointly, to ne-  
15 gotiate and enter into covered agreements on behalf of the  
16 United States.

17 “(b) REQUIREMENTS FOR CONSULTATION WITH  
18 CONGRESS.—

19 “(1) IN GENERAL.—Before initiating negotia-  
20 tions to enter into a covered agreement under sub-  
21 section (a), during such negotiations, and before en-  
22 tering into any such agreement, the Secretary and  
23 the United States Trade Representative shall jointly  
24 consult with the Committee on Financial Services  
25 and the Committee on Ways and Means of the

1 House of Representatives and the Committee on  
2 Banking, Housing, and Urban Affairs and the Com-  
3 mittee on Finance of the Senate.

4 “(2) SCOPE.—The consultation described in  
5 paragraph (1) shall include consultation with respect  
6 to—

7 “(A) the nature of the agreement;

8 “(B) how and to what extent the agree-  
9 ment will achieve the applicable purposes, poli-  
10 cies, priorities, and objectives of section 313  
11 and this section; and

12 “(C) the implementation of the agreement,  
13 including the general effect of the agreement on  
14 existing State laws.

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

18 “(1) the Secretary and the United States Trade  
19 Representative jointly submit to the congressional  
20 committees specified in subsection (b)(1), on a day  
21 on which both Houses of Congress are in session, a  
22 copy of the final legal text of the agreement; and

23 “(2) a period of 90 calendar days beginning on  
24 the date on which the copy of the final legal text of

1 the agreement is submitted to the congressional  
2 committees under paragraph (1) has expired.”.

3 (b) DUTIES OF SECRETARY.—Section 321(a) of title  
4 31, United States Code, is amended—

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

7 (2) in paragraph (8)(C), by striking the period  
8 at the end and inserting “; and”; and

9 (3) by adding at the end the following new  
10 paragraph:

11 “(9) advise the President on major domestic  
12 and international prudential policy issues in connec-  
13 tion with all lines of insurance except health insur-  
14 ance.”.

15 (c) CLERICAL AMENDMENT.—The table of sections  
16 for subchapter I of chapter 3 of title 31, United States  
17 Code, is amended by striking the item relating to section  
18 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Federal Insurance Office.

“Sec. 314. Covered agreements.

“Sec. 315. Continuing in office.”.

19 **SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.**

20 Not later than September 30, 2011, the Director of  
21 the Federal Insurance Office appointed under section  
22 313(b) of title 31, United States Code (as amended by  
23 section 8002(a)(3) of this title) shall submit to the Com-

1 mittee on Financial Services of the House of Representa-  
2 tives and the Committee on Banking, Housing, and Urban  
3 Affairs of the Senate a report describing the breadth and  
4 scope of the global reinsurance market and the critical role  
5 such market plays in supporting insurance in the United  
6 States.

7 **SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT**  
8 **OF INSURANCE REGULATION IN THE UNITED**  
9 **STATES.**

10 (a) **STUDY.**—The Director of the Federal Insurance  
11 Office appointed under section 313(b) of title 31, United  
12 States Code (as amended by section 8002(a)(3) of this  
13 title) shall conduct a study on how to modernize and im-  
14 prove the system of insurance regulation in the United  
15 States. Such study shall include consideration of the fol-  
16 lowing:

17 (1) Effective systemic risk regulation with re-  
18 spect to insurance.

19 (2) Strong capital standards and an appro-  
20 priate match between capital allocation and liabil-  
21 ities for all risk.

22 (3) Meaningful and consistent consumer protec-  
23 tion for insurance products and practices.

1           (4) Increased national uniformity through ei-  
2           ther a Federal charter or effective action by the  
3           States.

4           (5) Improved and broadened regulation of in-  
5           surance companies and affiliates on a consolidated  
6           basis, including affiliates outside of the traditional  
7           insurance business.

8           (6) International coordination.

9           (b) REPORT.—Not later than one year after the date  
10          of the enactment of this Act, the Director shall submit  
11          to the Committee on Financial Services of the House of  
12          Representatives and the Committee on Banking, Housing,  
13          and Urban Affairs of the Senate a report containing—

14               (1) the results of the study conducted under  
15               subsection (a); and

16               (2) any legislative, administrative, or regulatory  
17               recommendations that the Director considers appro-  
18               priate to modernize and improve the system of in-  
19               surance regulation in the United States.

20          (c) CONSULTATION.—In carrying out subsections (a)  
21          and (b), the Director shall consult with State insurance  
22          commissioners, consumer organizations, representatives of  
23          the insurance industry, policyholders, and other persons,  
24          as the Director considers appropriate.

