

CONSUMERS FIRST ACT

MAY 10, 2019.— Committed to the Committee of the Whole House on the State of the Union and Ordered to be printed

Ms. MAXINE WATERS of California, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1500]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1500) to require the Consumer Financial Protection Bureau to meet its statutory purpose, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	11
Background and Need for Legislation	11
Section-by-Section Analysis	19
Hearings	21
Committee Consideration	23
Committee Votes	23
Statement of Oversight Findings and Recommendations of the Committee	28
Statement of Performance Goals and Estimates	28
New Budget Authority and CBO Cost Estimate	28
Committee Cost Estimate	30
Unfunded Mandate Statement	30
Advisory Committee	30
Application of Law to the Legislative Branch	30
Earmark Statement	30
Duplication of Federal Programs	30
Changes to Existing Law	31

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Consumers First Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; sense of Congress.
- Sec. 3. Consumer Financial Protection Bureau.
- Sec. 4. Conforming amendments.
- Sec. 5. Executive and administration powers.
- Sec. 6. Offices of the Consumer Financial Protection Bureau.
- Sec. 7. Consumer Advisory Board reforms.
- Sec. 8. Effective date.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) **FINDINGS.**—The Congress finds the following:

(1) The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203) (“Dodd-Frank”), was signed into law on July 21, 2010, in order to, among other things, advance the goals of protecting consumers from predatory financial services practices and products that led to the 2007–2009 financial crisis.

(2) Title X of Dodd-Frank established a new Federal independent watchdog, known as the Consumer Financial Protection Bureau (“Consumer Bureau”), with broad authority to ensure that all hardworking consumers are given clear, accurate information that they need to shop for mortgages, credit cards, and other consumer financial products or services and to protect consumers from hidden fees, abusive terms, and other unfair, deceptive, or abusive acts or practices through strong implementation and enforcement of Federal consumer financial laws.

(3) Before the Consumer Bureau was established, Federal financial regulators were tasked with the dual responsibilities of supervising institutions for safety and soundness and compliance with consumer protections under Federal consumer financial laws. These agencies often prioritized the profitability of their regulated entities over the protection of consumers, even when institutions were found to have engaged in practices detrimental to their own customers’ financial well-being.

(4) Congress purposefully created the independent Consumer Bureau within the Federal Reserve System to address past regulatory gaps in our country’s financial regulatory regime—gaps that resulted in the most severe global financial crisis since the Great Depression. Among other things, Federal financial regulators were too reluctant to exercise their rulemaking, supervisory, and enforcement authorities to protect consumers from the misdeeds of the Consumer Bureau’s regulated entities. In creating the Consumer Bureau, Congress explicitly laid out in statute the Consumer Bureau’s purpose, five objectives, and six primary functions. Specifically:

(A) Section 1021(a) of Dodd-Frank states that the Consumer Bureau, “shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive”.

(B) Section 1021(b) of Dodd-Frank authorizes the Consumer Bureau, “to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”.

(C) Section 1021(c) of Dodd-Frank establishes the primary functions of the Consumer Bureau to be, “(1) conducting financial education programs; (2) collecting, investigating, and responding to consumer complaints; (3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets; (4) subject to sections 1024 through 1026, supervising covered persons for compli-

ance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law; (5) issuing rules, orders, and guidance implementing Federal consumer financial law; and (6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.”

(5) In doing so, Congress explicitly laid out these consumer-focused purpose, objectives, and primary functions for the Consumer Bureau to ensure that all consumers and all communities are protected. This is of extreme importance to communities of color who have been disproportionately impacted by the inequities of the financial system, resulting in an extreme racial wealth divide. Decades of segregation and discrimination have prevented consumers of colors from amassing wealth equal to their white counterparts, while predatory financial practices of have stripped consumers of color of their nominal existing wealth. For example, over the past 30 years, the average wealth of White families has grown by 84 percent—1.2 times the rate of growth for the Latino population and three times the rate of growth for the Black population. In light of historical practices and current-day disparities in banking and lending practices, the Consumer Bureau plays a key role in protecting communities of color from wealth-stripping financial products and ensuring their right to wealth building opportunities. The agency’s enforcement actions in auto lending, mortgages, and credit cards, and its rulemaking efforts have sought to address the predatory financial products such as payday loans and prepaid cards that are prolific in communities of color. The Consumer Bureau is essential in protecting vulnerable communities from discriminatory financial practices that has both perpetuated and exacerbated the racial wealth gap.

(6) Under Dodd-Frank, the Deputy Director of the Consumer Bureau shall serve as the Acting Director in the absence or unavailability of the Director, until the President appoints and the Senate confirms a new Director. Despite the plain letter of the law establishing a succession order to fill a vacancy in the Director’s position and the clear legislative history underscoring the importance of having an independent Federal consumer-focused agency, when the Consumer Bureau Director Richard Cordray resigned in November 2017, President Trump refused to recognize the Deputy Director as the rightful head of the agency and instead installed Mr. Mick Mulvaney, the Director of the White House Office of Management and Budget, to serve as the Consumer Bureau’s Acting Director. This appointment of a White House cabinet official to run the Consumer Bureau raises profound conflict of interest questions and undermines the vital independent nature of the agency.

(7) Additionally, the position of Acting Director is, by its nature, intended to be a temporary assignment to maintain the status quo at an agency and to ensure the agency is fulfilling its statutory purpose and mandates, until the President appoints, and the Senate confirms a permanent Director. Nevertheless, during his tenure, Mr. Mulvaney instituted drastic and severe changes to the Consumer Bureau’s daily operations and priorities contrary to the agency’s statutory purpose and mandates.

(8) The daily operations of a Federal agency are guided by its official mission contained in its long-term strategic plan. The Consumer Bureau’s mission should embrace both the spirit and plain letter of the law by fully recognizing the agency’s statutory purpose, objectives, and functions. It is troubling that the Consumer Bureau, under Mr. Mulvaney, issued a Strategic Plan for Fiscal Year (“FY”) 2018–FY 2022 that appears to deemphasize the Consumer Bureau’s core mandate under section 1021(a) of Dodd-Frank to, “enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services”, by not referencing the importance of enforcement in its mission. Instead, it emphasizes financial education by stating that the agency’s new mission is, “[t]o regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws and to educate and empower consumers to make better informed financial decisions”. This is in stark contrast from the Consumer Bureau’s Strategic Plan for FY 2013–FY 2017, which stated that the agency’s mission is helping, “consumer finance markets work by making rules more effective, *by consistently and fairly enforcing those rules*, and by empowering consumers to take more control over their economic lives” (emphasis added).

(9) Mr. Mulvaney has been praised by the White House for his efforts to undermine the Consumer Bureau, with one anonymous advisor acknowledging in a July 24, 2018, Politico article that, “His mission was to blow that up, which he has. He is very well-suited to the chaos.” Mr. Mulvaney’s misguided actions have included, among other things—

(A) stopping payments from the Civil Penalty Fund to harmed consumers;
 (B) trying to reduce the Consumer Bureau's funding and staffing by initially requesting \$0 be transferred from the Federal Reserve Board of Governors to carry out the agency's work, imposing a freeze on hiring professional career staff, and by arbitrarily directing staff to cut the agency's budget by $\frac{1}{5}$;

(C) politicizing the work of the Consumer Bureau by making unusual efforts to fill the independent agency with political appointees;

(D) reducing the Consumer Bureau's enforcement work, including taking only six enforcement actions in the first three quarters of 2018 (compared with 54 enforcement actions taken by the agency in 2015, 42 enforcement actions in 2016 and 36 enforcement actions in 2017), and dropping existing lawsuits and investigations into predatory payday lenders;

(E) taking steps that would undermine efforts to promote fair lending and combat discriminatory practices, including by hiring, and later refusing to remove, a political appointee with a history of racist written commentary to oversee the Office of Supervision, Enforcement, and Fair Lending, stripping away the enforcement powers of the Office of Fair Lending and Equal Opportunity, seeking to curb the Consumer Bureau's data collection under the Home Mortgage Disclosure Act, and indicating the Consumer Bureau would reconsider its approach toward enforcing the Equal Credit Opportunity Act;

(F) changing the role of the Office of Students and Young Consumers and, according to an August 27, 2018, resignation letter from Seth Frotman, the Consumer Bureau's former Assistant Director and Student Loan Ombudsman, "when new evidence came to light showing that the nation's largest banks were ripping off students on campuses across the country by saddling them with legally dubious account fees, Bureau leadership suppressed the publication of a report prepared by Bureau staff";

(G) abandoning the accepted and efficient practice of having its examiners review, as part of their routine examinations, creditors' compliance with the Military Lending Act in order to ensure the detection and assessment of risky activities that could jeopardize vital protections provided to active-duty servicemembers and their families;

(H) creating an Office of Cost Benefit Analysis that prioritizes businesses' expenses over harm caused to consumers, and unduly constrains oversight of the Consumer Bureau's regulated entities;

(I) freezing data collection to the detriment of supervision and enforcement;

(J) seeking to block the publication of the nature of consumers' complaints and how entities resolved them in the publicly available and transparent Consumer Complaint Database;

(K) restricting key input and feedback from a wide range of external stakeholders by effectively terminating members' positions on three advisory boards, including the statutorily mandated Consumer Advisory Board;

(L) proposing policies, including those regarding no-action letters, model disclosure pilot projects, and product sandboxes, that could put many kinds of financial institutions in an enforcement-free zone, letting bad actors that harm consumers off the hook entirely from enforcement, and allowing them to ignore the law; and

(M) neglecting to impose promptly any civil money penalty on a bank when it was found to be, among other things, improperly obtaining consumer reports and furnishing to consumer reporting agencies inaccurate information about consumers' credit.

(10) The repeated efforts under Mr. Mulvaney's leadership to hamstring the good work, passion, commitment, and the capacity of dedicated professional, career Consumer Bureau staff to fulfill the agency's statutory mission has likely contributed to low employee morale. According to a government-wide annual survey published in December 2018 that was conducted by the nonprofit, non-partisan Partnership for Public Service, the Consumer Bureau experienced the largest decline in employee morale for a government agency of its size. A workplace with low morale undermines, among other things, the agency's ability to hold bad actors accountable when they harm consumers, and if unaddressed, will distort the functioning of fair and competitive consumer marketplaces.

(11) Despite the fact that the agency has been referred to as the Consumer Financial Protection Bureau since it was created in 2010, Mr. Mulvaney opted to change the agency's well-known name. Although this decision is supposedly intended to ensure that the agency is in compliance with Dodd-Frank, when this change is viewed in conjunction with the other detrimental actions to un-

dermine the effectiveness of the agency, it can only be interpreted as an attempt to reduce the public's awareness of, and significant support for, the agency's role as the top Federal consumer cop as well as to obscure the public's ability to easily identify the appropriate Federal agency to contact when faced with predatory behavior by financial actors. As such, while some may view this particular decision as minor, the action served as an important symbolic and literal maneuver by the Trump Administration, through its appointment of Mr. Mulvaney, to diminish and undermine the consumer-focused mission of the Consumer Bureau. Director Kathy Kraninger, who was duly nominated by the President and confirmed by the Senate, announced plans in an email to staff on December 19, 2018, to reverse course and return to utilizing the agency's well-known name. However, questions remain regarding how this change will be implemented and to what extent the agency may continue to utilize Mr. Mulvaney's preferred name in certain circumstances.

(12) During Mr. Mulvaney's more than 12-month tenure running the agency, he only appeared once before the House Financial Services Committee to discuss his activities at the Consumer Bureau. This is despite the fact that the law requires, at a minimum, the Director's testimony before the Committee semi-annually. This weak congressional oversight under the direction of the previous Republican Majority pales in comparison to their oversight of the Consumer Bureau during former Director Richard Cordray's tenure. During Director Cordray's tenure, he and other senior Consumer Bureau officials testified before Congress more than 60 times; the agency was compelled to produce more than 200,000 pages of documents in response to over 90 letters of inquiry; more than 20 subpoenas were sent to the Consumer Bureau; and several of the Consumer Bureau's former and current employees were compelled to sit for depositions over 21 days, that lasted 136 hours, and produced 3,194 pages of transcripts.

(13) Dodd-Frank gives the Director of the Consumer Bureau broad administrative and executive powers to, among other things: fix the number of, and appoint and direct, all employees of the agency; direct the establishment and maintenance of divisions or other offices within the agency; determine the character of, and the necessity for, the obligations and expenditure of funds; and the use and expenditure of funds. These powers, however, are required to be exercised in a manner consistent with carrying out the responsibilities under Title X of Dodd-Frank, which includes complying with the enumerated Federal consumer financial laws under the Title, and satisfying the obligations in other applicable laws. Mr. Mulvaney's destructive actions have demonstrated the need for legislation to reorient the Director's discretionary authority to ensure the maintenance of all statutorily mandated policies, functions, and offices of the Consumer Bureau regardless of who is leading the agency.

(b) SENSE OF CONGRESS.—The following is the sense of Congress:

(1) The Consumer Financial Protection Bureau should meet its statutory purpose in a transparent and accountable manner by operating in a way that is consistent with both the spirit and plain letter of the law. This includes the agency fully carrying out the agency's statutory purpose, objectives, and functions, and the agency being transparent, timely, and responsive to all requests from Congress.

(2) Dodd-Frank underscores that the agency is designed to serve as an independent Federal agency that is primarily focused on the protection of all consumers, without any undue influence of partisan whims and special industry interests, in carrying out its responsibilities and duties.

(3) The official name of the agency should be consistent with this mandate, and the agency should, figuratively and literally, put "Consumers" first by using its better-known name as the "Consumer Financial Protection Bureau". Thus, any remaining utilization by the agency of the name, "Bureau of Consumer Financial Protection", or the acronym "BCFP", should cease in all forms.

(4) The statute establishing the Consumer Bureau has been grossly misinterpreted under Mr. Mulvaney's leadership, in a manner that is inconsistent with the agency's statutory purpose, objectives, and functions. One example of this was Mr. Mulvaney's inane suggestion that the statutory requirement for the Director to appear before relevant Congressional Committees to discuss its semi-annual reports could be interpreted as requiring the Director merely to attend a hearing and not answer questions, despite the well-established interpretation of a similar statutory requirement for the Chair of the Federal Reserve Board of Governors to appear before the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee on a semi-annual basis about the monetary policy report, as required by the Humphrey-Hawkins Full Employment Act. In the face of such blatant and disrespectful attempts to warp the authorizing and oversight role of the first branch of the Federal Govern-

ment—the United States Congress—by the Trump Administration, Congress must, in this instance, now refine the Consumer Bureau’s authority to ensure that the vital role that the Consumer Bureau should be playing within the country’s financial regulatory regime is not effectively destroyed by the agency’s current leadership.

(5) The Consumer Bureau, now under a new Director, should promptly reverse all anti-consumer actions taken during Mr. Mulvaney’s tenure, including the actions identified by this legislation, to ensure that the agency is fully complying with its statutory purpose, objectives, and functions to protect all consumers, including communities of color and vulnerable populations. One important action is for the Consumer Bureau to resume robust fair lending enforcement to ensure that every consumer has fair and equal access to affordable financial products and services. Another demonstration of this would be for the Consumer Bureau to immediately resume supervision of its regulated entities for compliance with the Military Lending Act to ensure for the most robust and efficient protection of active-duty servicemembers and their families. Other examples include the Consumer Bureau significantly revising its strategic plan to align it with its statutory purpose, objectives and functions, and for the agency to immediately resume coordinating closely with other Federal agencies, such as the Department of Education and the Department of Defense, and State regulators, as is required by section 1015 of Dodd-Frank to, “promote consistent regulatory treatment of consumer financial and investment products and services.”

(6) While the legislation is a direct response to address many of the misguided decisions that have been orchestrated under Mr. Mulvaney’s leadership at the Consumer Bureau that have been exposed to the public, as of the date of the bill’s introduction, and sharply criticized by numerous Federal and State officials, including law enforcement, as well as organizations representing servicemembers, senior citizens, and other vulnerable consumer populations, this legislation should not be viewed as an exhaustive list to fix all the damaging actions that may have occurred at this agency since the departure of former Director Cordray in November 2017, particularly since detailed information revealing the full scope, nature, and extent of the current flawed operation of the agency, and the adverse impact resulting from these actions, may not yet be publicly available. Rather, this legislation should be interpreted as an attempt to highlight and resolve a small sample of the publicly known egregious statements, decisions, and actions that have occurred since November 2017.

SEC. 3. CONSUMER FINANCIAL PROTECTION BUREAU.

(a) **IN GENERAL.**—Section 1011(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5491(a)) is amended by striking “Bureau of Consumer Financial Protection” and inserting “Consumer Financial Protection Bureau”.

(b) **DEEMING OF NAME.**—Any reference in any law, regulation, document, record, or other paper of the United States to the “Bureau of Consumer Financial Protection” shall be deemed a reference to the “Consumer Financial Protection Bureau”.

(c) **NAME USE REQUIREMENT.**—Section 1011 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5491) is amended by adding at the end the following:

“(f) **NAME USE REQUIREMENT.**—The Consumer Financial Protection Bureau shall refer to itself in any public communication, including on any website, as the ‘Consumer Financial Protection Bureau’ or the ‘CFPB’.”

SEC. 4. CONFORMING AMENDMENTS.

(a) **IN GENERAL.**—The Acts and provisions described under subsection (b) are amended by striking “Bureau of Consumer Financial Protection” each place such term appears (including in headings and items in table of contents) and inserting “Consumer Financial Protection Bureau”.

(b) **ACTS TO CONFORM.**—The Acts and provisions described in this subsection are as follows:

(1) The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.).

(2) The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).

(3) The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.).

(4) The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.).

(5) The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(6) The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3201 et seq.).

(7) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note et seq.).

- (8) The Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.).
- (9) Section 626 of the Financial Services and General Government Appropriations Act, 2009 (Division D of Public Law 111–8; 12 U.S.C. 5538).
- (10) The Gramm-Leach-Bliley Act (12 U.S.C. 1811 note et seq.).
- (11) The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.).
- (12) Section 10(a)(4) of the Homeowners Protection Act of 1998 (12 U.S.C. 4901 et seq.).
- (13) The Inspector General Act of 1978 (5 U.S.C. App 2).
- (14) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.).
- (15) The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.).
- (16) Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.).
- (17) The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).
- (18) The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.).
- (19) The Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.).
- (20) Sections 552a(w) and 3132(a)(1)(D) of title 5, United States Code.
- (21) Section 987(g)(3)(E) of title 10, United States Code.
- (22) Sections 3502(5) and 3513(c) of title 44, United States Code.

SEC. 5. EXECUTIVE AND ADMINISTRATION POWERS.

(a) OFFICE RESPONSIBILITIES.—Section 1012 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5492) is amended—

- (1) by redesignating subsection (c) as subsection (d); and
- (2) by inserting after subsection (b) the following:

“(c) OFFICE RESPONSIBILITIES.—Notwithstanding subsections (a) and (b), section 1013(a), and any other provision of law, with respect to the specific functional units and offices described under subsections (b), (c), (d), (e), (g), and (h) of section 1013 and the advisory boards described under section 1014, the Director—

“(1) shall ensure that such functional units, offices, and boards perform the functions, duties, and coordination assigned to them under the applicable provision of section 1013 or 1014; and

“(2) may not reorganize or rename such units, offices, and boards in a manner not provided for under the applicable provision of section 1013 or 1014.”.

(b) DUTY TO PROVIDE ADEQUATE STAFFING.—Section 1013(a)(1) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(a)(1)) is amended by adding at the end the following:

“(D) DUTY TO PROVIDE ADEQUATE STAFFING.—The Director shall ensure that the specific functional units and offices described under subsections (b), (c), (d), (e), (g), and (h) of section 1013, as well as other units and offices with supervisory and enforcement duties, are provided with sufficient staff to carry out the functions, duties, and coordination of those units and offices.”.

(c) LIMITATION ON POLITICAL APPOINTEES.—Section 1013(a)(1) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(a)(1)) is amended by adding at the end the following:

“(E) LIMITATION ON POLITICAL APPOINTEES.—

“(i) IN GENERAL.—In appointing employees of the Bureau who are political appointees, the Director shall ensure that the number and duties of such political appointees are as similar as possible to those of the other Federal primary financial regulatory agencies.

“(ii) POLITICAL APPOINTEES DEFINED.—For purposes of this subparagraph, the term ‘political appointee’ means an employee who holds—

“(I) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character;

“(II) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a) of title 5, United States Code); or

“(III) a position under the Executive Schedule (subchapter II of chapter 53 of title 5, United States Code).”.

(d) PUBLIC AVAILABILITY OF COMPLAINT INFORMATION.—

(1) IN GENERAL.—Section 1013(b)(3) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(b)(3)) is amended—

(A) in subparagraph (A)—

- (i) by inserting “publicly available” before “website”;

(ii) by inserting “publicly available” before “database”, each place such term appears; and

(iii) by adding at the end the following: “The Director shall ensure that the landing page of the main website of the Bureau contains a clear and conspicuous hyperlink to the consumer complaint database described in this subparagraph and shall ensure that such database is user-friendly and in plain writing (as such term is defined in the Plain Writing Act of 2010). The Director shall ensure that all information on the website or the database that explains how to file a complaint with the Bureau, as well as all reports of the Bureau with respect to information contained in the database, shall be provided in each of the 5 most commonly spoken languages, other than English, in the United States, as determined by the Bureau of the Census on an ongoing basis, and in formats accessible to individuals with hearing or vision impairments.”; and

(B) by adding at the end the following:

“(E) PUBLIC AVAILABILITY OF INFORMATION.—

“(i) IN GENERAL.—The Director shall—

“(I) make all consumer complaints available to the public on a website of the Bureau;

“(II) place a clear and conspicuous hyperlink on the landing page of the main website of the Bureau to the website described under subclause (I); and

“(III) ensure that such website—

“(aa) is searchable and sortable by both consumer financial product or service and by covered person; and

“(bb) is user-friendly and written in plain language.

“(ii) INCLUSION OF COMPLAINTS SUBMITTED WITH INQUIRIES.—For purposes of clause (i), in addition to all complaints described under subparagraph (A), consumer complaints shall include any complaints submitted with, or as part of, an inquiry described under section 1034.

“(iii) REMOVAL OF PERSONALLY IDENTIFIABLE INFORMATION.—In making the information described under clause (i) available to the public, the Director shall remove all personally identifiable information.”.

(2) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—The Director of the Consumer Financial Protection Bureau shall ensure—

(i) that the database and website described under section 1013(b)(3) of the Consumer Financial Protection Act of 2010 have, at a minimum, the same availability, transparency, and functionality that such database and website had prior to November 24, 2017; and

(ii) that consumers are able, at a minimum, to submit complaints to the Bureau with respect to—

(I) any covered person or service provider; and

(II) any financial product or service.

(B) DEFINITIONS.—For purposes of this paragraph, the terms “covered person”, “financial product or service”, and “service provider” have the meaning given those terms, respectively, under section 1002 of the Consumer Financial Protection Act of 2010.

(e) MEMORANDA OF UNDERSTANDING.—

(1) REPORT ON CURRENT MOUS.—Not later than the end of the 30-day period beginning on the date of enactment of this Act, the Director of the Consumer Financial Protection Bureau shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate listing—

(A) each memorandum of understanding in effect with the Bureau on November 24, 2017;

(B) any changes made to such a memorandum of understanding since such date, including any memorandum of understanding rescinded since such date; and

(C) a justification for each such change or rescission.

(2) SEMI-ANNUAL REPORT ON MOUS.—Section 1016(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5496(c)) is amended—

(A) in paragraph (8), by striking “and” at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(10) a list of each memorandum of understanding in effect with the Bureau, any changes made to a memorandum of understanding since the last report was made under subsection (b), and a justification for each such change;”.

(f) **ADDITIONAL REPORT INFORMATION ON CONSUMER SAVINGS.**—Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493) is amended by adding at the end the following:

“(i) **ADDITIONAL REPORT INFORMATION ON CONSUMER SAVINGS.**—In issuing each report required under section 502(d) of the Credit CARD Act of 2009, the Bureau shall include a numerical estimate of the amount that such Act has saved consumers in fees impacted by such Act, relative to the level of such fees prior to the enactment of such Act.”.

SEC. 6. OFFICES OF THE CONSUMER FINANCIAL PROTECTION BUREAU.

(a) **CLARIFICATION OF THE DUTIES OF THE OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.**—Section 1013(c)(2) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(c)(2)) is amended—

(1) by striking “Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including” and inserting “powers and duties of the Office of Fair Lending and Equal Opportunity shall include”;

(2) in subparagraph (C), by striking “and” at the end;

(3) in subparagraph (D), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

“(E) implementing the Bureau’s enforcement and supervisory authority with respect to fair lending laws; and

“(F) such additional powers and duties as the Director may determine appropriate.”.

(b) **OFFICE OF STUDENTS AND YOUNG CONSUMERS.**—

(1) **IN GENERAL.**—Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493), as amended by section 5(f), is further amended by adding at the end the following:

“(j) **OFFICE OF STUDENTS AND YOUNG CONSUMERS.**—

“(1) **IN GENERAL.**—The Director shall, not later than the end of the 60-day period beginning on the date of enactment of this section, establish an Office of Students and Young Consumers, which shall work to empower students, young people, and their families to make more informed financial decisions about saving and paying for college, accessing safer and more affordable financial products and services, all matters related to private education loans (as defined under section 1035(e)), and repaying student loan debt, including private education loans.

“(2) **HEAD OF THE OFFICE.**—The head of the Office of Students and Young Consumers shall be the Assistant Director and Student Loan Ombudsman, and the Assistant Director and Student Loan Ombudsman shall carry out all functions established under section 1035 through the Office of Students and Young Consumers.

“(3) **SUPERVISORY, ENFORCEMENT, AND REGULATORY MATTERS.**—The Office of Students and Young Consumers shall assist in all supervisory, enforcement, and regulatory matters of the Bureau related to the functions of the Office.

“(4) **COORDINATION.**—The Director shall enter into memoranda of understanding and similar agreements with the Department of Education and other Federal and State agencies, as appropriate, in order to carry out the business of the Office of Students and Young Consumers.”.

(2) **RENAMING AND APPOINTMENT CLARIFICATION OF THE PRIVATE EDUCATION LOAN OMBUDSMAN.**—

(A) **IN GENERAL.**—Section 1035 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5535) is amended—

(i) in the heading of the section by striking “**PRIVATE EDUCATION**” and inserting “**ASSISTANT DIRECTOR AND STUDENT**”;

(ii) in subsection (a), by striking “The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman” and inserting “The Director shall designate an individual as the Assistant Director and Student Loan Ombudsman”;

(iii) in subsection (b), by striking “The Secretary and the Director” and inserting “The Director”; and

(iv) in subsection (d)(2), by inserting “the Director,” before “the Secretary,”.

(B) **CLERICAL AMENDMENT.**—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is

amended, in the item relating to section 1035, by striking “Private education” and inserting “Assistant director and student”.

(C) DEEMING OF NAME.—Any reference in any law, regulation, document, record, or other paper of the United States to the “Private Education Loan Ombudsman” shall be deemed a reference to the “Assistant Director and Student Loan Ombudsman”.

(c) SEMI-ANNUAL REPORT TO CONGRESS ON CERTAIN OFFICES OF THE BUREAU.—Section 1016(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5496(c)), as amended by section 5(e)(2), is further amended by adding at the end the following:

“(11) with respect to each of the specific functional units and offices established under section 1013—

“(A) a detailed description of the activities of the unit or office since the last report was made under subsection (b); and

“(B) an analysis of the efforts of the Bureau to achieve the duties of the unit or office; and

“(12) with respect to each specific functional units and offices established under section 1013, as well as each other unit and office with supervisory and enforcement duties, a break down of the number of political and professional career staff assigned to and employed by each unit or office at the end of the reporting period.”.

(d) FUNCTION OF ANY UNIT OR OFFICE ESTABLISHED TO CONDUCT COST BENEFIT ANALYSIS.—Any unit or office established to conduct cost benefit analysis within the Consumer Financial Protection Bureau shall, as its sole function, carry out the considerations required by section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)(2)(A)).

SEC. 7. CONSUMER ADVISORY BOARD REFORMS.

(a) IN GENERAL.—Section 1014 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5494) is amended—

(1) by amending subsection (b) to read as follows:

“(b) MEMBERSHIP.—

“(1) QUALIFICATIONS.—In appointing the members of the Consumer Advisory Board, the Director shall—

“(A) seek to assemble a diverse and inclusive group of experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation; and

“(B) ensure that at least $\frac{2}{3}$ of the members represent the interests of consumers, including experts in consumer protection, fair lending, civil rights, and representatives of communities that have been significantly impacted by higher-priced mortgage loans and other products that resulted in consumer harm.

“(2) NUMBER OF MEMBERS.—The Director shall appoint not fewer than 25 members to the Consumer Advisory Board, and not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

“(3) MEMBERSHIP RIGHTS AFTER CHARTER CHANGE.—Any change to the charter for the Consumer Advisory Board affecting the membership shall not preclude prior or current members from applying for consideration to serve on a reconstituted Consumer Advisory Board.”; and

(2) in subsection (c)—

(A) by striking “meet from” and inserting “meet in person from”; and

(B) by adding at the end the following: “The Bureau shall provide adequate notice to the members of the Consumer Advisory Board of the time and date of each meeting, and of any meeting cancellations.”

(b) INCLUSION OF THE DIRECTOR IN MEETINGS AND ACCESS TO BUREAU STAFF.—Section 1014 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5494) is amended by adding at the end the following:

“(e) INCLUSION OF THE DIRECTOR IN MEETINGS AND ACCESS TO BUREAU STAFF.—With respect to each in person meeting of the Consumer Advisory Board—

“(1) the Director shall attend such meeting in person; and

“(2) the Director shall ensure that the members of the Consumer Advisory Board have an opportunity to meet and engage in person with all appropriate staff and office of the Bureau.”.

(c) TREATMENT OF MEMBERS OF THE CONSUMER ADVISORY BOARD.—Notwithstanding any other law—

(1) any member of the Consumer Advisory Board of the Consumer Financial Protection Bureau on November 1, 2017, may continue to serve as a member of such advisory board until March 27, 2020, and may not be removed from such position without cause by the Director of the Bureau until such date; and

(2) any member of the Consumer Advisory Board of the Consumer Financial Protection Bureau on the date of enactment of this Act, may continue to serve as a member of such advisory board until March 27, 2020, and may not be removed from such position without cause by the Director of the Bureau until such date.

(d) ADDITIONAL REQUIREMENTS FOR ADVISORY COMMITTEES.—Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493), as amended by section 6(b)(1), is further amended by adding at the end the following:

“(k) ADVISORY COMMITTEE REQUIREMENTS.—

“(1) QUALIFICATIONS.—In appointing members of any advisory committee, other than the Consumer Advisory Board, the Director shall ensure that at least $\frac{1}{3}$ of the members represent the interests of consumers, including experts in consumer protection, fair lending, civil rights, and representatives of communities that have been significantly impacted by higher-priced mortgage loans and other products that resulted in consumer harm.

“(2) SELECTION OF MEMBERS REPRESENTING MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.—In appointing members of any advisory committee, the Director shall seek to promote diversity and inclusion in making appointments, including by appointing individuals who represent minority-owned and women-owned businesses.”.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act, except that the Director of the Consumer Financial Protection Bureau shall have 30 days to complete any operational changes to the Bureau required by this Act or an amendment made by this Act.

PURPOSE AND SUMMARY

On March 28, 2019, Chairwoman Maxine Waters introduced H.R. 1500, the “Consumer First Act,” which amends the Consumer Financial Protection Act to ensure that the Consumer Financial Protection Bureau (Consumer Bureau) reverses the anti-consumer actions taken since November 2017, largely under Mr. Mick Mulvaney’s direction, and returns to its mission of protecting consumers from unfair, deceptive, or abusive acts or practices by financial institutions as was originally intended by Congress when the Consumer Bureau was created in 2010.

BACKGROUND AND NEED FOR LEGISLATION

More than a decade ago, the United States experienced one of the worst financial crises in its history, caused in large part by a failure to have strong protections implemented or enforced for consumers of financial products and services. There was a reluctance of the Federal regulators to implement and enforce consumer protection laws and exercise their authority to prevent predatory practices from occurring in the financial marketplace.

Prior to the creation of the Consumer Financial Protection Bureau, the responsibility for supervising financial regulated entities for consumer protection was spread among the various Federal financial regulators, including the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Trade Commission (FTC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (which was abolished by Congress in 2010), the National Credit Union Administration (NCUA), and the Federal Deposit Insurance Corporation (FDIC). This resulted in a

fragmented regulatory approach in which government agencies lacked clear regulatory accountability and coordination for monitoring consumer protection laws. Furthermore, Federal prudential regulators were tasked with dual, and often conflicting, duties of supervising the safety and soundness of financial institutions while also ensuring compliance with consumer protection laws. This fragmented and conflicted regulatory framework resulted in regulatory arbitrage and lax enforcement of consumer protection laws.

The Committee held a series of hearings that examined the failures of these Federal regulators to combat predatory lending practices, which contributed to the 2008 financial crisis. The Committee's findings were later confirmed by the extensive investigation conducted by the Financial Crisis Inquiry Commission (FCIC), which concluded that:

As irresponsible lending, including predatory and fraudulent practices, became more prevalent, the Federal Reserve and other regulators and authorities heard warnings from many quarters. Yet the Federal Reserve neglected its mission 'to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers.' It failed to build the retaining wall before it was too late. And the Office of the Comptroller of the Currency and the Office of Thrift Supervision, caught up in turf wars, preempted state regulators from reining in abuses.¹

In the summer of 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Title X of the law established the Consumer Financial Protection Bureau as the first ever independent Federal agency provided with rulemaking, supervisory, and enforcement authorities over the offering and provision of consumer financial products and services. The Consumer Bureau was intended to be a strong watchdog for all consumers, upholding their rights under the law and combating all forms of unfair, deceptive or abusive acts or practices by financial firms.

Under the leadership of Consumer Bureau's first Director, Mr. Richard Cordray, the Consumer Bureau was a tremendous success, returning nearly \$12 billion to over 30 million consumers who were harmed, receiving over 1.2 million consumer complaints about financial institutions (97 percent of which received a timely response), and making the financial marketplace stronger and fairer for all as Congress intended. Furthermore, because of the Consumer Bureau, American consumers no longer had to worry about exploding mortgages, hidden prepaid card fees, or unnecessary foreclosures due to weak servicing standards. The Consumer Bureau also helped to take the confusing jargon out of consumer lending by requiring easy-to-understand disclosures and materials from financial institutions, empowering consumers to make the best financial decisions for themselves.

Mr. Mulvaney's tenure at the Consumer Bureau and its aftermath

In November 2017, President Trump—in a controversial move that was challenged in court—designated his Office of Management

¹National Commission on the Casus of the Financial and Economic Crisis in the United States, *The Financial Crisis Inquiry Report* xxiii (2011).

and Budget (OMB) Director, Mick Mulvaney, to temporarily run the Consumer Bureau after Director Cordray resigned. After he arrived at the agency and until he departed in December 2018, Mr. Mulvaney worked to dismantle the Consumer Bureau and on several occasions appeared to prioritize the financial services industry at the expense of consumers. There are many actions the Consumer Bureau took under Mr. Mulvaney's leadership that were harmful to consumers, including:

- Politicizing the agency: After Mr. Mulvaney arrived, the Trump Administration dispatched numerous political appointees to run the Consumer Bureau, an unusual approach for an independent regulatory agency with enforcement powers, to control the work of the professional, career employees. According to the 2016 U.S. Government Policy and Supporting Positions report, commonly referred to as the "Plum Book", the Federal Reserve, the Office of the Comptroller of the Currency, and the Consumer Bureau at that time had zero political appointees on staff beyond their Senate-confirmed leadership. During Mr. Mulvaney's tenure, however, he brought on as many as 12 political appointees. According to one former career official, this dynamic resulted in the suppression of a staff report exposing predatory actions by the nation's largest banks that charge students legally dubious account fees.²

- Restructuring and shrinking the agency: Mr. Mulvaney undermined the roles of several established offices that previously led the Consumer Bureau's efforts to better protect and empower vulnerable consumers, such as by folding the only unit in the federal government solely dedicated to protecting student loan borrowers from predatory actors into a broader financial education office, seriously undermining efforts to address student debt, as discussed further below. In addition, the Consumer Bureau's workforce was reduced by more than 10 percent during Mr. Mulvaney's tenure of 13 months.

- Weakening fair lending enforcement: One of those harmful structural changes significantly weakened fair lending enforcement being conducted by the Consumer Bureau, when Mr. Mulvaney stripped the Office of Fair Lending and Equal Opportunity of its supervisory and enforcement powers. Furthermore, the Committee finds it troubling that Mr. Mulvaney would hire, and Director Kraninger would continue to retain, an individual entrusted with overseeing the Consumer Bureau's supervision, enforcement, and fair lending work whose past racist writings suggest at best a significant lack of understanding of the issue and work.

- Renaming the agency to diminish its stature: Mr. Mulvaney directed the renaming of the agency, presumably in an attempt to reduce the public's awareness of the agency's role as the top Federal consumer watchdog. In addition to creating confusion for the public and costing taxpayers' money, this ideologically-driven step would burden financial institutions. It has been reported that a Consumer Bureau analysis

²Resignation Letter from Mr. Seth Frotman, former Assistant Director & Student Loan Ombudsman, Consumer Bureau, to The Honorable Mick Mulvaney (Aug. 27, 2018), available at: https://www.nclc.org/images/pdf/student_loans/Frotman_Letter.pdf.

has suggested renaming the agency would cost the financial industry hundreds of millions of dollars.

- **Eliminating coordination with other agencies:** The Secretary of Education, Betsy DeVos, unilaterally rescinded agreements to cooperate with the Consumer Bureau in overseeing student lenders. While former Director Cordray made efforts to resurrect these agreements to promote consistent regulatory treatment of consumer financial and investment products and services, as the law requires, it is unclear to the Committee that Mr. Mulvaney or Director Kraninger have made any such efforts. A lack of coordination between the agencies increases gaps in oversight, resulting in harmed students not have their full protections under the law enforced by the federal government.

- **Blocking payday loan cases:** The Committee is concerned with how an enforcement action against four payday lenders who had allegedly misled customers and charged exorbitantly high interest rates close to 1,000 percent was dismissed during Mr. Mulvaney's tenure.

- **Dismantling protections for active-duty servicemembers and their families:** Contrary to the Consumer Bureau's duty under the law, the agency, under Mr. Mulvaney's direction and continued by Director Kraninger, eliminated routine supervisory exams for compliance with the Military Lending Act (MLA), which, as discussed more fully below, undermines protections for active-duty servicemembers.

- **Attempting to hide the consumer complaint database:** Mr. Mulvaney reportedly explored ways to take the transparent and highly effective consumer complaint database offline, hiding from the public and state law enforcement agencies more than a million consumer complaints about financial institutions' misdeeds. While Director Kraninger has acknowledged the database supported the Consumer Bureau's mission, she unfortunately has not ruled out the possibility of making it private.³

- **Ignoring and effectively terminating the Consumer Advisory Board (CAB):** Mr. Mulvaney ignored statutory requirements to meet with CAB members twice a year and effectively terminated this panel of outside experts that provided useful feedback for years on the agency's work. He also barred their future participation in the CAB to express their views to the Consumer Bureau.

- **Failing to penalize bad actors:** In Mr. Mulvaney's final days, the Consumer Bureau settled with a large financial firm that allegedly violated the law by improperly obtaining consumer reports and providing credit bureaus with inaccurate information without imposing any civil money penalty.

These are a sample of the many troubling actions by the Consumer Bureau since November 2017, largely under Mr. Mulvaney's leadership, which ended in December 2018. The Committee is deeply disturbed by these actions, and the fact that Mr. Mulvaney ap-

³ Peter Schroerer and Katanga Johnson, "New U.S. consumer watchdog chief to continue review of complaints database, fair lending," Reuters (April 18, 2019), available at: <https://www.reuters.com/article/us-usa-cfpb-interview-exclusive/exclusive-new-u-s-consumer-watchdog-chief-to-continue-review-of-complaints-database-fair-lending-idUSKCN1RU244>.

peared to be carrying out the Trump Administration's ambition to undermine the Consumer Bureau. According to one anonymous White House advisor who was quoted describing Mr. Mulvaney's tenure running the Consumer Bureau in a July 2018, Politico article, "His mission was to blow that up, which he has. He is very well-suited to the chaos."⁴

The most recent numbers provided by the Consumer Bureau indicate there has been a significant drop in public enforcement actions. In 2018, the Consumer Bureau took only 11 public enforcement actions. This compares with 54 enforcement actions taken by the agency in 2015, 42 enforcement actions in 2016 and 36 enforcement actions in 2017.⁵ With respect to fair lending, the Consumer Bureau's Semi-Annual Report to Congress for Spring 2018 reported only one instance of a public enforcement action regarding fair lending, which involved credit card discrimination by American Express and was brought during Director Cordray's tenure. The Fall 2018 Semi-Annual Report reported no public fair lending enforcement actions during the covered April-September 2018 period, despite issuing a higher number of supervisory actions against institutions.⁶

Protecting servicemembers

Eliminating routine supervisory exams for compliance with the Military Lending Act is of particular concern to the Committee. These MLA examinations can help identify any violations of consumer protections active-duty servicemembers should be able count on. In January 2019, Director Kraninger decided to continue Mr. Mulvaney's flawed policy and wrote a letter to Congress requesting that Congress grant "clear authority" for the Consumer Bureau to examine lenders for MLA Compliance. However, Congress has already granted clear authority for the Consumer Bureau to supervise lenders for compliance with the MLA, and the agency is willfully neglecting its duties by not supervising lenders and protecting this nation's servicemembers.

Suspending MLA compliance examinations is contrary to established procedures and practices previously conducted by the Consumer Bureau. According to legal analysis from a former Consumer Bureau senior counsel: (1) the Military Lending Act, as amended by the National Defense Authorization Act for Fiscal Year 2013 that granted the Consumer Bureau authority in this space, requires the Consumer Bureau to enforce the MLA the same way that the Consumer Bureau enforces the Truth in Lending Act (TILA) and expressly directs the Consumer Bureau to use "any other applicable authorities available" to protect servicemembers; (2) federal law directs the Consumer Bureau to "obtain information" about "compliance systems or procedures" of large banks and

⁴ Nancy Cook, "What do we think about Mick?: Trump narrows down chief search," Politico (July 24, 2018), available at: <https://www.politico.com/story/2018/07/24/trump-mulvaney-ayers-chief-739543>.

⁵ Consumer Bureau, "Enforcement actions," available at: <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>.

⁶ See Consumer Bureau, "Spring 2018 Semi-Annual Report of the Bureau of Consumer Financial Protection Bureau," (Nov. 9, 2018), available at: https://s3.amazonaws.com/files.consumerfinance.gov/documents/bcfp_semi-annual-report-to-congress_spring-2018.pdf; and Consumer Bureau, "Fall 2018 Semi-Annual Report of the Bureau of Consumer Financial Protection," (Feb. 12, 2019), available at: https://s3.amazonaws.com/files.consumerfinance.gov/documents/cfpb_semi-annual-report-to-congress_fall-2018.pdf.

payday lenders covered by the MLA; (3) under Dodd-Frank, the CFPB can cover MLA violations within its exams for the purpose of “detecting and assessing risks” to consumers; and, (4) any MLA violation renders a service members’ loan void, thereby triggering a concurrent violation of federal consumer financial laws under the Consumer Bureau’s supervisory jurisdiction.⁷

Protecting student borrowers

On August 27, 2018, Seth Frotman, then the Assistant Director and Student Loan Ombudsman, wrote a scathing resignation letter to Mr. Mulvaney, highlighting that the changes made under Mr. Mulvaney’s leadership were undercutting enforcement of the law, undermining the Consumer Bureau’s independence, and shielding bad actors from scrutiny. He wrote, “For example, late last year, when new evidence came to light showing that the nation’s largest banks were ripping off students on campuses across the country by saddling them with legally dubious account fees, Bureau leadership suppressed the publication of a report prepared by Bureau staff. When pressed by Congress about this, you chose to leave students vulnerable to predatory practices and deny any responsibility to bring this information to light.”⁸ Mr. Frotman provided testimony to the Committee in March 2019, and observed, “Perhaps most disconcerting is that, in the last 15 months, it is impossible to cite a single significant or substantial action that the Bureau has initiated on behalf of the 44 million student loan borrowers in this country.” It was only through a Freedom of Information Act request from media that eventually uncovered this suppressed report in December 2018, which showed that Wells Fargo charged college students fees that were on average several times higher than some of its competitors.

Furthermore, the Committee is concerned about a growing crisis related to student loan borrowers. 44 million Americans collectively owe more than \$1.5 trillion in student loan debt. Last year, over a million borrowers defaulted on their student loan, and today, more than eight million student loan borrowers are in default. According to research from the Federal Reserve and other organizations, there is increasing evidence that student debt is hindering

⁷This analysis is consistent with the views of other officials and numerous interested organizations. In October 2018, a bipartisan coalition of 33 state Attorneys General came to a similar conclusion in writing Mr. Mulvaney to resume MLA supervision. See North Carolina Attorney General Press Release, “Attorney General Josh Stein Leads Coalition to Urge CFPB to Protect Military Servicemembers from Financial Exploitation,” (Oct. 23, 2018), *available at*: [https://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Attorney-General-Josh-Stein-Leads-Coalition-to-\(1\).aspx](https://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Attorney-General-Josh-Stein-Leads-Coalition-to-(1).aspx). Retired Army Colonel Paul Kantwill, who previously ran the Consumer Bureau’s Office of Servicemember Affairs, wrote that the policy to not conduct MLA exams is, “akin to removing your sentries from guarding posts on military compounds. It will result in the bad guys getting in.” See Army Col. Paul Kantwill (Ret.), “Commentary: Feds moving in wrong (and dangerous) direction on military consumer protection,” *Military Times* (Sep. 5, 2018), *available at*: <https://www.militarytimes.com/opinion/commentary/2018/09/05/commentary-feds-moving-in-wrong-and-dangerous-direction-on-military-consumer-protection/>. In August 2018, leaders of 38 military and veteran service organizations wrote two separate letters with the same content to Mr. Mulvaney and then Defense Secretary James Mattis, asking that, “We urge you to stand with our military and against any attempt to weaken the Military Lending Act, including through the Bureau’s supervisory and enforcement authority.” See Karen Jowers, “Advocates to Mattis: Don’t waver in protecting troops against predatory lenders,” *Military Times* (Aug. 23, 2018), *available at*: <https://www.militarytimes.com/pay-benefits/2018/08/23/advocates-to-mattis-dont-waver-in-protecting-troops-against-predatory-lenders/>. The Consumer Bureau’s own legal analysis, provided by Director Kraninger in a March 8, 2019, letter to Senators Jack Reed and Sherrod Brown, likewise concedes there is a clear interpretation of the law where the Bureau may examine its regulated entities for compliance with MLA.

⁸ See *supra* note 2.

homeownership and are creating other barriers to economic mobility. Rising student debt levels resulted in almost half a million fewer homes purchased by millennials over the last 15 years. Student loan borrowers need a Consumer Bureau that will focus on their unique challenges.

Correcting the past through reform

As was the case prior to the financial crisis a decade ago, laws are meaningless when they are not enforced, and consumers are left to fend for themselves when their government will not protect them. Congress specifically designed the Consumer Bureau to protect hardworking Americans from unfair, deceptive or abusive acts and practices in the financial marketplace.

The Consumers First Act seeks to ensure the agency resumes carrying out its mandates and mission to better protect consumers in a manner consistent with the law that established the agency. H.R. 1500 seeks to block the Trump Administration's anti-consumer agenda and reverse its past efforts, largely under the direction of Mr. Mulvaney, to undermine the mission of the Consumer Bureau. The bill, among other things, provides that the new Consumer Bureau leadership should reverse all anti-consumer actions taken under Mr. Mulvaney's leadership, including providing that the agency should immediately resume Military Lending Act examinations.

H.R. 1500 would also restore the supervisory and enforcement powers of the Office of Fair Lending and Equal Opportunity (OFLEO), reestablish a dedicated student loan office, require adequate agency staffing to carry out its mandates, including for supervision and enforcement, and limit the number of political appointees the Consumer Bureau may hire to address allegations that President Trump's appointees politicized and suppressed the work of dedicated, professional staff.

Furthermore, H.R. 1500 mandates that the consumer complaint database remain transparent and publicly accessible, reinstates the Consumer Advisory Board that was effectively terminated by Mr. Mulvaney with new protections to ensure consumer voices are well represented, and that diversity and inclusion are promoted on the agency's advisory boards, and requires more reporting about and encourage greater cooperation by the agency with other government agencies, like the U.S. Departments of Education and Defense.

Strengthening advisory boards

In June 2018, Mr. Mulvaney effectively terminated the 25 members of the Consumer Advisory Board. Legally required meetings with the group were canceled. Mr. Mulvaney also disbanded the Community Bank Advisory Council and the Credit Union Advisory Council. Mr. Mulvaney subsequently dramatically shrank the size of the CAB to a nine-member panel, substantially limiting valuable input the agency received from a wide range of perspectives.

Director Kraninger made some changes in March 2019, allowing advisory board members to serve for a longer period than Mr. Mulvaney proposed, and increasing the number of in person meetings from two to three times a year. However, these changes are insufficient to ensure the Consumer Bureau hears regularly from

not just industry, but consumer perspectives as well. The Committee also believes that it is imperative that the Consumer Bureau prioritizes diversity and inclusion in selecting members for all of its advisory boards.

The Consumers First Act would restore the size of the CAB, and it stipulates that meetings must be in person. The legislation also ensures that consumer perspectives must be appropriately represented on all of its advisory boards. Finally, the Committee is also committed to promoting diversity and inclusion regarding which stakeholders the Consumer Bureau consults with. The bill stipulates that, “the Director shall seek to promote diversity and inclusion in making appointments, including by appointing individuals who represent minority-owned and women-owned businesses.”

Fully accountable Consumer Bureau

During consideration of H.R. 1500, the Committee rejected several amendments which would have significantly undermined the Consumer Bureau’s effectiveness under the guise of establishing accountability. However, the Committee would like to highlight several facts and considerations. Like other Federal agencies, the Consumer Bureau is subject to various reporting requirements, as well as oversight by the Congress, Government Accountability Office and an Inspector General. Since the Consumer Bureau is a bureau of the Federal Reserve System, the Federal Reserve’s Inspector General oversees the Consumer Bureau, similar to how the Treasury Department’s Inspector General oversees the Office of the Comptroller of the Currency since it is a bureau of the Treasury Department. The Consumer Bureau also has an independent funding mechanism apart from the appropriations process, similar to other Federal banking agencies.

In addition, the Consumer Bureau is subject to extraordinary constraints and accountability measures, often above and beyond what all other Federal financial regulators are subject to. For example, the Consumer Bureau’s Director must testify before Congress twice a year (see Section 1016 of the Dodd-Frank Act). The leaders of the FDIC and OCC are not subject to any such requirement. Furthermore, the Consumer Bureau’s rules are subject to veto by other agencies of the Financial Stability Oversight Council (FSOC) (see Section 1023 of the Dodd-Frank Act). No other agency has its rules reviewed or subject to a veto by FSOC members. In addition, the Consumer Bureau is required to give small businesses a preview of new rulemaking proposals and receive extensive feedback from small businesses before even giving notice to the broader public under the Small Business Regulatory Enforcement Fairness Act (SBREFA). The Consumer Bureau must also assess possible increases in the cost of credit for small entities and consider any significant alternatives that could minimize those costs (see Section 1100G of the Dodd-Frank Act). No other financial regulator must comply with these mandates.

Furthermore, while some continue to attack the Consumer Bureau, the D.C. Circuit Court of Appeals upheld the Consumer Bureau’s leadership structure as completely constitutional in the matter of *PHH Corporation, et al., v. Consumer Financial Protection*

*Bureau.*⁹ As legal experts from the Constitutional Accountability Center have explained, “Since the CFPB’s creation, opponents of financial regulation have sought to weaken the Bureau’s ability to protect the interests of consumers, pursuing their agenda through both legislation and litigation. In particular, financial institutions have challenged the Bureau’s constitutionality on the ground that its structure and authorities violate the Constitution’s separation of powers . . . [these] arguments against its constitutionality are all without merit. . . . The Bureau’s combination of powers and organizational structure clearly passes constitutional muster under a separation-of-powers analysis, and statutory requirements go even further, ensuring that the Bureau is responsive, accountable, and transparent to political representatives and the public.”

Conclusion

As described above and outlined in the Consumers First Act, Mr. Mulvaney stripped the Consumer Bureau’s Office of Fair Lending of its ability to supervise and enforce fair lending laws, closed the Office of Students and Young Consumers, turned a blind eye to uncovering abuse of active-duty servicemembers and their families, and effectively terminated the Consumer Bureau’s Consumer Advisory Board. His mission was to dismantle the agency from within and he left behind no less than 12 political appointees of the Trump Administration, who have, among other things, allegedly suppressed reports from professional Consumer Bureau staff about Wells Fargo and other banks ripping off student borrowers. The Trump Administration has worked hard to undermine the Consumer Financial Protection Bureau. The Consumers First Act, which is supported by over 50 consumer, civil rights, housing and labor organizations,¹⁰ would reverse this anti-consumer agenda, and it would return the agency to its non-partisan mission of protecting consumers.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Consumers First Act.

⁹ F.3d _____, No. 15–1177, 2018 WL 627055 (D.C. Cir. Jan. 31, 2018), available at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/B7623651686D60D585258226005405AC/\\$file/15-1177.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/B7623651686D60D585258226005405AC/$file/15-1177.pdf).

¹⁰These include Americans for Financial Reform, Allied Progress, Adelante Mujeres, California Reinvestment Coalition, Center for New York City Neighborhoods, Center for Global Policy Solutions, Center for Popular Democracy, Center for Responsible Lending, Communications Workers of America (CWA), Connecticut Fair Housing Center, Consumer Action, Consumer Federation of America, CREDO, Demos, Empire Justice Center, Florida Alliance for Consumer Protection, HomeSmartNY, Main Street Alliance, MERIT (Micro Enterprise Resources Initiatives & Training), Mobilization for Justice, NAACP, National Association of Consumer Advocates, National Association for Latino Community Asset Builders, National CAPACD, National Center for Law and Economic Justice, National Community Reinvestment Coalition (NCRC), National Community Stabilization Trust, National Consumer Law Center (on behalf of its low income clients), National Consumers League, National Fair Housing Alliance, New Jersey Citizen Action, Policy Matters Ohio, PolicyLink, Prosperity Now, Public Citizen, Public Good Law Center, Public Justice Center, Reinvestment Partners, Revolving Door Project, Tennessee Citizen Action, Texas Appleseed, The Greenlining Institute, The Leadership Conference on Civil and Human Rights, The National Council of Asian Pacific Americans (NCAPA), Tzedek DC, U.S. PIRG, UnidosUS (formerly the National Council of La Raza), Ventures, Virginia Citizens Consumer Council, Virginia Poverty Law Center, and Woodstock Institute.

Section 2. Findings and Sense of Congress

This section lays out a series of congressional findings describing the rationale behind the creation of the strong, independent Consumer Bureau, to, among other things, combat predatory consumer financial products and practices that contributed to the global financial crisis a decade ago. The findings identify a set of actions taken by former interim Director Mick Mulvaney after Director Cordray resigned in November 2017. The section also details why the Consumer Bureau must meet its statutory purpose and mandates. The section also provides a Sense of Congress establishing actions that the Consumer Bureau must take to return to its core mission of protecting consumers, including directing the Consumer Bureau to immediately resume MLA exams. The Committee expresses a clear and unambiguous view that the Consumer Bureau must cease being derelict in its duties and resume MLA examinations at once for the benefit of active-duty servicemembers and their families.

Section 3. Codify the name of the Consumer Financial Protection Bureau

This section would codify the well-known name of the Consumer Financial Protection Bureau to reverse Mr. Mulvaney's prior efforts, and any future effort, to diminish and obscure the identity of this Federal consumer-focused watchdog by using the name "Bureau of Consumer Financial Protection Bureau or BCFP." An internal Consumer Bureau estimate concluded that Mr. Mulvaney's rebranding efforts would cost the industry \$300 million. While Director Kraninger has signaled a reversal in the decision to rebrand the agency, she has stated that she may continue to use both names, which the Committee is concerned would continue to cause confusion.

Section 4. Conforming amendments

This section further codifies the name of the Consumer Financial Protection Bureau throughout various statutes.

Section 5. Executive and administration powers

This section would reverse structural changes made by Mulvaney to diminish the responsibilities of several offices, including the Office of Fair Lending and Equal Opportunity. The bill includes several structural protections, including requiring adequate staffing of these offices, limiting the number of political appointees that can politicize the work of career staff, and ensuring the public consumer complaint database remains available to the public. The bill would also require more transparency about the Memorandums of Understanding the Consumer Bureau utilizes to ensure it is fully coordinating with other Federal agencies, such as the Department of Education. Moreover, the Committee is concerned about comments made by Director Kathy Kraninger at a hearing held by the Committee in March 2018, and subsequent remarks she has made, that appear to deemphasize the importance of strong enforcement. The Committee strongly urges the Consumer Bureau to utilize all available resources and the staffing required by this section to take its obligations to enforce the law seriously, and to not exhibit any fear or favor of any financial firm that breaks the law.

Section 6. Offices of the Consumer Financial Protection Bureau

This section clarifies OFLEO’s supervisory and enforcement authority with respect to fair lending laws. It also restores the Office of Students and Young Consumers, by formalizing its role in the agency’s regulatory, supervisory, and enforcement work on student and young consumer issues. This section also would require additional reporting on the work of the Consumer Bureau to fulfill all of its mandates, and it would limit the ability of the Director to use cost-benefit analysis to weaken supervisory or enforcement efforts.

Section 7. Consumer Advisory Board reforms

This section would reinstate the members of the Consumer Advisory Board (CAB) that were effectively terminated by Mulvaney, and it would allow them to continue to serve out their original terms until 2020 without threat of arbitrary removal. The section requires in-person meetings of the CAB with the Director and Consumer Bureau staff, providing opportunity for CAB members to engage with all appropriate staff and offices of the Consumer Bureau. This section also promotes a consideration of diverse candidates to the Consumer Bureau’s advisory boards, and it ensures consumer perspectives will be well represented on the CAB and other advisory boards.

Section 8. Effective date

The Director must implement all structural changes required by the bill within 30 days.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress—

(1) The Committee on Financial Services held a hearing to consider a discussion draft of H.R. 1500 entitled “Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau” on March 7, 2019. Testifying on the first panel was the Honorable Kathy Kraninger, Director, Consumer Financial Protection Bureau, where she discussed the Consumer Bureau’s Spring 2018 Semi-Annual Report to Congress. Testifying on the second panel was: Mr. Hilary Shelton, Director & Senior Vice President for Advocacy and Policy, National Association for the Advancement of Colored People; Ms. Linda Jun, Senior Policy Counsel, Americans for Financial Reform; Ms. Jennifer Davis, Government Relations Deputy Director, National Military Family Association; Mr. Seth Frotman, Executive Director, Student Borrower Protection Center; and Mr. Scott Weltman, Managing Shareholder, Weltman, Weinberg & Reis Co., L.P.A.

(2) In addition, the following related hearings were held—

a. The Committee held a hearing entitled, “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System,” on February 26, 2019. Testifying on the first panel was: Mr. Mark Begor, CEO, Equifax; Mr. James M. Peck, President and CEO, TransUnion; and Mr. Craig Boundy, CEO, Experian North America. Testifying on the second panel was: Ms. Lisa Rice, President and CEO, National Fair Housing Alliance (NFHA); Ms. Chi Wu, Staff Attorney, National Con-

sumer Law Center (NCLC); Ms. Jennifer Brown, Associate Director, Economic Policy, UnidosUS; Mr. Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group (PIRG); and Mr. Thomas P. Brown, Partner, Paul Hastings.

b. The Committee held a hearing entitled, “Holding Megabanks Accountable: An Examination of Wells Fargo’s Pattern of Consumer Abuses,” on March 12, 2019. Testifying was Timothy J. Sloan, President and Chief Executive Officer of Wells Fargo & Company.

c. The Committee held a hearing entitled, “Holding Megabanks Accountable: A Review of Global Systemically Important Banks 10 years after the Financial Crisis,” on April 10, 2019. Testifying on a single-panel was: Mr. Michael L. Corbat, Chief Executive Officer, Citigroup; Mr. James Dimon, Chairman & Chief Executive Officer, JP Morgan Chase & Co.; Mr. James P. Gorman, Chairman & Chief Executive Officer, Morgan Stanley; Mr. Brian T. Moynihan, Chairman & Chief Executive Officer, Bank of America; Mr. Ronald P. O’Hanley, President & Chief Executive Officer, State Street Corporation; Mr. Charles W. Scharf, Chairman & Chief Executive Officer, Bank of New York Mellon; and Mr. David M. Solomon, Chairman & Chief Executive Officer, Goldman Sachs.

d. In the 115th Congress, the Committee held a hearing entitled “A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers and Entrepreneurs,” on April 26 and April 28, 2017. Testifying were Mr. Peter J. Wallison, Senior Fellow and Arthur F. Burn Fellow, Financial Policy Studies, American Enterprise Institute; Dr. Norbert J. Michel, Senior Research Fellow, Financial Regulations and Monetary Policy, The Heritage Foundation; The Honorable Michael S. Barr, Professor of Law, University of Michigan Law School; Mr. Alex J. Pollock, Distinguished Senior Fellow, The R Street Institute; Ms. Lisa D. Cook, Associate Professor, Economics and International Relations, Michigan State University; Ms. Hester Peirce, Director, Financial Markets Working Group and Senior Research Fellow, Mercatus Center, George Mason University; Mr. John Allison, Former President and Chief Executive Officer, Cato Institute; the Honorable Elizabeth Warren, United States Senator; Rohit Chopra, Senior Fellow, Consumer Federation of America; Corey Klemmer, Corporate Research Analyst, Office of Investment, AFL–CIO; Rev. Willie Gable, Pastor, National Baptist Convention USA, Inc.; John C. Coffee Jr., Adolf A. Berle Professor of Law, Columbia University; Rob Randhava, Senior Counsel, Leadership Conference on Civil and Human Rights; Melanie Lubin, Maryland Securities Commissioner, North American Securities Administrators Association; Emily Liner, Senior Policy Advisor, Economic Program, Third Way; Amanda Jackson, Organizing and Outreach Manager, Americans for Financial Reform; Ken Bertsch, Executive Director, Council of Institutional Investors; and Sarah Edelman, Director, Housing Policy, Center for American Progress (CAP).

e. In the 115th Congress, the Committee held a hearing entitled, “The Semi-Annual Report on the Bureau of Consumer Financial Protection,” on April 11, 2018. Testifying was the

Honorable Mick Mulvany, Director of the Office of Management and Budget and Acting Director of the Bureau.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 26–28, 2019, and ordered H.R. 1500 to be reported favorably to the House with an amendment in the nature of a substitute by a recorded vote of 34 yeas and 26 nays, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 1500:

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer		X
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, <i>Ranking Member</i>	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure H.R. 1500

Amendment No. 1b.

Offered by: Stivers #2

Agreed To	Yes	No	Prsnt	Wdm
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	26 Ayes - 34 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer		X
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, <i>Ranking Member</i>	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure _ H.R. 1500

Amendment No.: 1c.

Offered by: Steil

Agreed To	Yes	No	Prsnt	Wdm
		X		
Vote	Ayes		Nays	

Record Vote	FC 26 Ayes - 34 Noes
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Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer		X
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, <i>Ranking Member</i>	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure: H.R. 1500

Amendment No.: 1e.

Offered by: Barr #5

Agreed To	Yes	No	Prsnt	Wdm
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	26 Ayes - 34 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas	X	
	Ms. Thaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>		X
	Ms. Wagner		X
	Mr. King		X
	Mr. Lucas		X
	Mr. Posey		X
	Mr. Luetkemeyer		X
	Mr. Huizenga		X
	Mr. Duffy		X
	Mr. Stivers		X
	Mr. Barr		X
	Mr. Tipton		X
	Mr. Williams		X
	Mr. Hill		X
	Mr. Emmer		X
	Mr. Zeldin		X
	Mr. Loudermilk		X
	Mr. Mooney		X
	Mr. Davidson		X
	Mr. Budd		X
	Mr. Kustoff		X
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)		X
	Mr. Rose		X
	Mr. Steil		X
	Mr. Gooden		X
	Mr. Riggleman		X
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure: Final passage of H.R. 1500, as amended

Agreed To	Yes X	No	Prsnt	Wdrn
Voice Vote	Ayes		Nays	

Record Vote	FC 34 Ayes - 26 Noes
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STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 1500 are to ensure that the Consumer Finance Protection Bureau returns to its central mission of protecting consumers from predatory practices by financial institutions

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 1500 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 2019.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1500, Consumers First Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1500, Consumers First Act			
As ordered reported by the House Committee on Financial Services on March 28, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	9	19
Revenues	0	0	0
Deficit Effect	0	9	19
Spending Subject to Appropriation (Outlays)	0	0	0
Pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 1500 would impose several requirements on the Consumer Financial Protection Bureau (CFPB). Specifically, the bill would:

- Make fair lending supervision and enforcement by the CFPB’s Office of Fair Lending and Equal Opportunity (OFLEO) a statutory requirement;
- Require the CFPB to establish an Office of Students and Young Consumers (OSYC) that would provide direct assistance to the agency’s units responsible for supervising, enforcing, and regulating the nonfederal student loan market;
- Require the director to appoint at least 25 members to the agency’s Consumer Advisory Board; and
- Require the agency to report to the Congress on matters such as changes to agency memorandums of understanding and the number of political appointees at the agency.

The estimated budgetary effect is shown in Table 1. The costs of the legislation fall within budget function 370 (commerce and housing credit).

TABLE 1—ESTIMATED INCREASES IN DIRECT SPENDING UNDER H.R. 1500

	By fiscal year, millions of dollars—													
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029	
Increases in Direct Spending														
Estimated Budget														
Authority	0	2	2	2	2	2	2	2	.....	.....	2	10	.....
Estimated Outlays	0	1	2	2	2	2	2	2	.....	.....	2	9	.....

Using information from the CFPB about staffing levels prior to 2018, CBO estimates that enacting H.R. 1500 would require additional staff and would increase direct spending by \$19 million over the 2020–2029 period. The CFPB is permanently authorized to request and receive funding from the Federal Reserve in an amount necessary to carry out its operations.

Under H.R. 1500, CBO expects that OFLEO would carry out more fair lending supervision and enforcement activities compared to current practice, which would require additional staff and lead to increased litigation costs. CBO estimates that the CFPB would need two additional full-time staff for the OFLEO activities. CBO also estimates that the CFPB would hire five additional full-time staff to operate the newly created OSYC. CBO expects that OSYC would assist in all supervisory, enforcement, and regulatory activities related to student loans.

CBO estimates that the initial annual cost for each additional employee would be \$200,000. After accounting for anticipated inflation CBO estimates that hiring additional staff would cost \$16 million over the 2020–2029 period—\$5 million for the OFLEO and \$11 million for the OSYC.

Under the bill, the Director of the CFPB would be required to appoint 16 additional members to the Consumer Advisory Board. Currently, the board has 9 members. CBO estimates that supporting the additional board members would cost \$3 million over the 2020–2029 period assuming support costs for the current board are expanded proportionally. Based on the costs of similar tasks, CBO estimates that the new reporting requirements to the Con-

gress and other administrative costs under the bill would cost \$1 million over the same period.

The CFPB's costs under H.R. 1500 could be higher or lower than CBO's estimates. Under H.R. 1500, the CFPB would still have considerable discretion about the level of resources it chooses to commit to individual responsibilities.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 1500. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act, which is attached.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act (as amended), the Committee adopts as its own the estimate of federal mandates regarding H.R. 1500, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation. Section 7 of H.R. 1500 does amend provisions of existing law providing for the Consumer Advisory Board but does not create a new advisory board.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the Congressional Accountability Act, Pub. L. No. 104-1 H.R. 1500, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1500 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 1500 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public

Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 7, as reported, are shown as follows:

400.CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Dodd-Frank Wall Street Reform and Consumer Protection Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

TITLE X—[BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*

* * * * *

Subtitle C—Specific Bureau Authorities

* * * * *

Sec. 1035. [Private education] *Assistant director and student loan ombudsman.*

* * * * *

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) AFFILIATE.—The term “affiliate” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) APPROPRIATE FEDERAL BANKING AGENCY.—On and after the transfer date, the term “appropriate Federal banking agency” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended by title III.

(3) BOARD OF GOVERNORS.—The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

(4) BUREAU.—The term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* established under title X.

(5) COMMISSION.—The term “Commission” means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) COMMODITY FUTURES TERMS.—The terms “futures commission merchant”, “swap”, “swap dealer”, “swap execution facility”, “derivatives clearing organization”, “board of trade”, “commodity trading advisor”, “commodity pool”, and “commodity pool operator” have the same meanings as given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(7) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(8) COUNCIL.—The term “Council” means the Financial Stability Oversight Council established under title I.

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

(10) FEDERAL BANKING AGENCY.—The term—

(A) “Federal banking agency” means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) “Federal banking agencies” means all of the agencies referred to in subparagraph (A), collectively.

(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term “functionally regulated subsidiary” has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(12) PRIMARY FINANCIAL REGULATORY AGENCY.—The term “primary financial regulatory agency” means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.);

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading advisor or introducing broker to be registered under that Act;

(iv) any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the derivatives

clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vi) any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vii) any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) any registered entity under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(13) PRUDENTIAL STANDARDS.—The term “prudential standards” means enhanced supervision and regulatory standards developed by the Board of Governors under section 165.

(14) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(15) SECURITIES TERMS.—The—

(A) terms “broker”, “dealer”, “issuer”, “nationally recognized statistical rating organization”, “security”, and “securities laws” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term “investment adviser” has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(C) term “investment company” has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

(16) STATE.—The term “State” means any State, commonwealth, territory, or possession of the United States, the Dis-

trict of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(17) TRANSFER DATE.—The term “transfer date” means the date established under section 311.

(18) OTHER INCORPORATED DEFINITIONS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—The terms “bank”, “bank holding company”, “control”, “deposit”, “depository institution”, “Federal depository institution”, “Federal savings association”, “foreign bank”, “including”, “insured branch”, “insured depository institution”, “national member bank”, “national nonmember bank”, “savings association”, “State bank”, “State depository institution”, “State member bank”, “State nonmember bank”, “State savings association”, and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) HOLDING COMPANIES.—The term—

(i) “bank holding company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(ii) “financial holding company” has the same meaning as in section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)); and

(iii) “savings and loan holding company” has the same meaning as in section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)).

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TITLE I—FINANCIAL STABILITY

* * * * *

Subtitle B—Office of Financial Research

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SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Financial Research.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) TERM OF SERVICE.—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) EXECUTIVE LEVEL.—The Director shall be compensated at Level III of the Executive Schedule.

(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

- (5) RESPONSIBILITIES, DUTIES, AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.
- (c) BUDGET.—The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.
- (d) OFFICE PERSONNEL.—
- (1) IN GENERAL.—The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.
- (2) COMPENSATION.—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.
- (3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—
- (A) by striking “Finance Board,” and inserting “Finance Board, the Office of Financial Research, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*”; and
- (B) by striking “and the Office of Thrift Supervision,”.
- (4) SENIOR EXECUTIVES.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking “and the National Credit Union Administration;” and inserting “the National Credit Union Administration, the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, and the Office of Financial Research;”.
- (e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.
- (f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.
- (g) POST-EMPLOYMENT PROHIBITIONS.—The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regula-

tions may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(h) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

(i) FELLOWSHIP PROGRAM.—The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

(j) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:“Director of the Office of Financial Research.”

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TITLE X—[BUREAU OF CONSUMER FINANCIAL PROTECTION] CONSUMER FINANCIAL PROTECTION BUREAU

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Subtitle A—[Bureau of Consumer Financial Protection] Consumer Financial Protection Bureau

SEC. 1001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Act of 2010”.

* * * * *

SEC. 1011. ESTABLISHMENT OF THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] CONSUMER FINANCIAL PROTECTION BUREAU.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System, an independent bureau to be known as the “[Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*”, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5, United States Code. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) **IN GENERAL.**—There is established the position of the Director, who shall serve as the head of the Bureau.

(2) **APPOINTMENT.**—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) **QUALIFICATION.**—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) **COMPENSATION.**—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) **DEPUTY DIRECTOR.**—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) **TERM.**—

(1) **IN GENERAL.**—The Director shall serve for a term of 5 years.

(2) **EXPIRATION OF TERM.**—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) **REMOVAL FOR CAUSE.**—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) **SERVICE RESTRICTION.**—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) **OFFICES.**—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

(f) **NAME USE REQUIREMENT.**—*The Consumer Financial Protection Bureau shall refer to itself in any public communication, including on any website, as the “Consumer Financial Protection Bureau” or the “CFPB”.*

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) **POWERS OF THE BUREAU.**—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) **DELEGATION OF AUTHORITY.**—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) **OFFICE RESPONSIBILITIES.**—*Notwithstanding subsections (a) and (b), section 1013(a), and any other provision of law, with respect to the specific functional units and offices described under subsections (b), (c), (d), (e), (g), and (h) of section 1013 and the advisory boards described under section 1014, the Director—*

(1) *shall ensure that such functional units, offices, and boards perform the functions, duties, and coordination assigned to them under the applicable provision of section 1013 or 1014; and*

(2) *may not reorganize or rename such units, offices, and boards in a manner not provided for under the applicable provision of section 1013 or 1014.*

[(c)] (d) AUTONOMY OF THE BUREAU.—

(1) **COORDINATION WITH THE BOARD OF GOVERNORS.**—Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) **AUTONOMY.**—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) **RULES AND ORDERS.**—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) **RECOMMENDATIONS AND TESTIMONY.**—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative

recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

(5) CLARIFICATION OF AUTONOMY OF THE BUREAU IN LEGAL PROCEEDINGS.—The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau, in accordance with the applicable provisions of title 5, United States Code.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.

(C) WAIVER AUTHORITY.—

(i) IN GENERAL.—In making any appointment under subparagraph (A), the Director may waive the requirements of chapter 33 of title 5, United States Code, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)), while providing for—

(I) fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(II) fair and open competition and equitable treatment in the consideration and selection of individuals to positions;

(III) fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, and promoting employees.

(ii) VETERANS PREFERENCES.—In implementing this subparagraph, the Director shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33 of title 5, United States Code. The authority under this subparagraph to waive the requirements of that

chapter 33 shall expire 5 years after the date of enactment of this Act.

(D) DUTY TO PROVIDE ADEQUATE STAFFING.—The Director shall ensure that the specific functional units and offices described under subsections (b), (c), (d), (e), (g), and (h) of section 1013, as well as other units and offices with supervisory and enforcement duties, are provided with sufficient staff to carry out the functions, duties, and coordination of those units and offices.

(E) LIMITATION ON POLITICAL APPOINTEES.—

(i) IN GENERAL.—In appointing employees of the Bureau who are political appointees, the Director shall ensure that the number and duties of such political appointees are as similar as possible to those of the other Federal primary financial regulatory agencies.

(ii) POLITICAL APPOINTEES DEFINED.—For purposes of this subparagraph, the term “political appointee” means an employee who holds—

(I) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character;

(II) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a) of title 5, United States Code); or

(III) a position under the Executive Schedule (subchapter II of chapter 53 of title 5, United States Code).

(2) COMPENSATION.—Notwithstanding any otherwise applicable provision of title 5, United States Code, concerning compensation, including the provisions of chapter 51 and chapter 53, the following provisions shall apply with respect to employees of the Bureau:

(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the Director.

(B) The Director shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are comparable to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)).

(3) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—

(A) EMPLOYEE ELECTION.—Employees appointed to the Bureau may elect to participate in either—

(i) both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, under the same terms on which such participation is offered to employees of the Board of Governors who participate in such plans and under the terms and conditions specified under section 1064(i)(1)(C); or

(ii) the Civil Service Retirement System under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System under chapter 84 of title 5, United States Code, if previously covered under one of those Federal employee retirement systems.

(B) ELECTION PERIOD.—Bureau employees shall make an election under this paragraph not later than 1 year after the date of appointment by, or transfer under subtitle F to, the Bureau. Participation in, and benefit accruals under, any other retirement plan established or maintained by the Federal Government shall end not later than the date on which participation in, and benefit accruals under, the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan begin.

(C) EMPLOYER CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of such plan.

(D) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986, (26 U.S.C. 414).

(4) LABOR-MANAGEMENT RELATIONS.—Chapter 71 of title 5, United States Code, shall apply to the Bureau and the employees of the Bureau.

(5) AGENCY OMBUDSMAN.—

(A) ESTABLISHMENT REQUIRED.—Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(B) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subparagraph (A) shall—

(i) act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau; and

(ii) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative

consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) **COMMUNITY AFFAIRS.**—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) **COLLECTING AND TRACKING COMPLAINTS.**—

(A) **IN GENERAL.**—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a *publicly available* website, and a *publicly available* database or utilizing an existing *publicly available* database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate. *The Director shall ensure that the landing page of the main website of the Bureau contains a clear and conspicuous hyperlink to the consumer complaint publicly available database described in this subparagraph and shall ensure that such publicly available database is user-friendly and in plain writing (as such term is defined in the Plain Writing Act of 2010). The Director shall ensure that all information on the website or the publicly available database that explains how to file a complaint with the Bureau, as well as all reports of the Bureau with respect to information contained in the publicly available database, shall be provided in each of the 5 most commonly spoken languages, other than English, in the United States, as determined by the Bureau of the Census on an ongoing basis, and in formats accessible to individuals with hearing or vision impairments.*

(B) **ROUTING CALLS TO STATES.**—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems;

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable

information and sharing of information on complaint resolution or related compliance procedures and resources; and

(iii) participation by the State agency includes measures necessary to provide for protection of personally identifiable information that conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that apply to the Federal agencies described in subparagraph (D).

(C) **REPORTS TO THE CONGRESS.**—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) **DATA SHARING REQUIRED.**—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, subject to the standards applicable to Federal agencies for protection of the confidentiality of personally identifiable information and for data security and integrity. The prudential regulators, the Federal Trade Commission, and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, subject to the standards applicable to Federal agencies for protection of confidentiality of personally identifiable information and for data security and integrity.

(E) **PUBLIC AVAILABILITY OF INFORMATION.**—

(i) **IN GENERAL.**—*The Director shall—*

(I) *make all consumer complaints available to the public on a website of the Bureau;*

(II) *place a clear and conspicuous hyperlink on the landing page of the main website of the Bureau to the website described under subclause (I); and*

(III) *ensure that such website—*

(aa) *is searchable and sortable by both consumer financial product or service and by covered person; and*

(bb) *is user-friendly and written in plain language.*

(ii) **INCLUSION OF COMPLAINTS SUBMITTED WITH INQUIRIES.**—*For purposes of clause (i), in addition to all complaints described under subparagraph (A), consumer complaints shall include any complaints submitted with, or as part of, an inquiry described under section 1034.*

(iii) **REMOVAL OF PERSONALLY IDENTIFIABLE INFORMATION.**—*In making the information described under*

clause (i) available to the public, the Director shall remove all personally identifiable information.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The **【Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including】** *powers and duties of the Office of Fair Lending and Equal Opportunity shall include—*

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; **【and】**

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate**【.】**;

(E) implementing the Bureau's enforcement and supervisory authority with respect to fair lending laws; and

(F) such additional powers and duties as the Director may determine appropriate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL EDUCATION.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Education, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Education shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy, through activities including providing opportunities for consumers to access—

(A) financial counseling, including community-based financial counseling, where practicable;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

- (i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;
 - (ii) reduce debt; and
 - (iii) improve the financial situation of the consumer;
 - (E) assistance in developing long-term savings strategies; and
 - (F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.
- (3) COORDINATION.—The Office of Financial Education shall coordinate with other units within the Bureau in carrying out its functions, including—
- (A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and
 - (B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.
- (4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—
- (A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
 - (B) the Committee on Financial Services of the House of Representatives.
- (5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—
- (A) in subparagraph (B), by striking “and” at the end;
 - (B) by redesignating subparagraph (C) as subparagraph (D); and
 - (C) by inserting after subparagraph (B) the following new subparagraph:
“(C) the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*; and”.
- (6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: “The Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall serve as the Vice Chairman.”.
- (7) STUDY AND REPORT ON FINANCIAL LITERACY PROGRAM.—
- (A) IN GENERAL.—The Comptroller General of the United States shall conduct a study to identify—
 - (i) the feasibility of certification of persons providing the programs or performing the activities described in paragraph (2), including recognizing outstanding programs, and developing guidelines and resources for community-based practitioners, including—
 - (I) a potential certification process and standards for certification;
 - (II) appropriate certifying entities;

(III) resources required for funding such a process; and

(IV) a cost-benefit analysis of such certification;

(ii) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs;

(iii) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and

(iv) recommendations intended to encourage the development of programs that effectively improve financial education outcomes and empower consumers to make better informed financial decisions based on findings.

(B) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

(1) IN GENERAL.—The Director shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

(2) COORDINATION.—

(A) REGIONAL SERVICES.—The Director is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

(B) AGREEMENTS.—The Director is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

(3) DEFINITION.—As used in this subsection, the term “service member” means any member of the United States Armed Forces and any member of the National Guard or Reserves.

(f) TIMING.—The Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs shall each be established not later than 1 year after the designated transfer date.

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

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the designated transfer date, the Director shall establish the Office of Financial Protection for Older Americans, the functions of which shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this subsection, referred to as “seniors”) on protection from unfair, deceptive, and abusive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) ASSISTANT DIRECTOR.—The Office of Financial Protection for Older Americans (in this subsection referred to as the “Office”) shall be headed by an assistant director.

(3) DUTIES.—The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior’s needs; and

(iii) methods in which a senior can verify a financial advisor’s credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair, deceptive, and abusive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

(h) APPLICATION OF FACAA.—Notwithstanding any provision of the Federal Advisory Committee Act (5 U.S.C. App.), such Act shall apply to each advisory committee of the Bureau and each subcommittee of such an advisory committee.

(i) ADDITIONAL REPORT INFORMATION ON CONSUMER SAVINGS.—*In issuing each report required under section 502(d) of the Credit CARD Act of 2009, the Bureau shall include a numerical estimate of the amount that such Act has saved consumers in fees impacted by such Act, relative to the level of such fees prior to the enactment of such Act.*

(j) OFFICE OF STUDENTS AND YOUNG CONSUMERS.—

(1) IN GENERAL.—*The Director shall, not later than the end of the 60-day period beginning on the date of enactment of this section, establish an Office of Students and Young Consumers, which shall work to empower students, young people, and their families to make more informed financial decisions about saving and paying for college, accessing safer and more affordable financial products and services, all matters related to private education loans (as defined under section 1035(e)), and repaying student loan debt, including private education loans.*

(2) HEAD OF THE OFFICE.—*The head of the Office of Students and Young Consumers shall be the Assistant Director and Student Loan Ombudsman, and the Assistant Director and Student Loan Ombudsman shall carry out all functions established under section 1035 through the Office of Students and Young Consumers.*

(3) SUPERVISORY, ENFORCEMENT, AND REGULATORY MATTERS.—*The Office of Students and Young Consumers shall assist in all supervisory, enforcement, and regulatory matters of the Bureau related to the functions of the Office.*

(4) COORDINATION.—*The Director shall enter into memoranda of understanding and similar agreements with the Department of Education and other Federal and State agencies, as appropriate, in order to carry out the business of the Office of Students and Young Consumers.*

(k) ADVISORY COMMITTEE REQUIREMENTS.—

(1) QUALIFICATIONS.—*In appointing members of any advisory committee, other than the Consumer Advisory Board, the Director shall ensure that at least $\frac{1}{3}$ of the members represent the interests of consumers, including experts in consumer protection, fair lending, civil rights, and representatives of communities that have been significantly impacted by higher-priced mortgage loans and other products that resulted in consumer harm.*

(2) SELECTION OF MEMBERS REPRESENTING MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.—*In appointing members of*

any advisory committee, the Director shall seek to promote diversity and inclusion in making appointments, including by appointing individuals who represent minority-owned and women-owned businesses.

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) **ESTABLISHMENT REQUIRED.**—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

[(b) **MEMBERSHIP.**—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.]

(b) **MEMBERSHIP.**—

(1) **QUALIFICATIONS.**—*In appointing the members of the Consumer Advisory Board, the Director shall—*

(A) seek to assemble a diverse and inclusive group of experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation; and

(B) ensure that at least $\frac{2}{3}$ of the members represent the interests of consumers, including experts in consumer protection, fair lending, civil rights, and representatives of communities that have been significantly impacted by higher-priced mortgage loans and other products that resulted in consumer harm.

(2) **NUMBER OF MEMBERS.**—*The Director shall appoint not fewer than 25 members to the Consumer Advisory Board, and not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.*

(3) **MEMBERSHIP RIGHTS AFTER CHARTER CHANGE.**—*Any change to the charter for the Consumer Advisory Board affecting the membership shall not preclude prior or current members from applying for consideration to serve on a reconstituted Consumer Advisory Board.*

(c) **MEETINGS.**—The Consumer Advisory Board shall [meet from] *meet in person from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year. The Bureau shall provide adequate notice to the members of the Consumer Advi-*

sory Board of the time and date of each meeting, and of any meeting cancellations.

(d) **COMPENSATION AND TRAVEL EXPENSES.**—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

(e) **INCLUSION OF THE DIRECTOR IN MEETINGS AND ACCESS TO BUREAU STAFF.**—*With respect to each in person meeting of the Consumer Advisory Board—*

(1) the Director shall attend such meeting in person; and

(2) the Director shall ensure that the members of the Consumer Advisory Board have an opportunity to meet and engage in person with all appropriate staff and office of the Bureau.

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SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) **APPEARANCES BEFORE CONGRESS.**—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) **REPORTS REQUIRED.**—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, a report, beginning with the session following the designated transfer date. The Bureau may also submit such report to the Committee on Commerce, Science, and Transportation of the Senate.

(c) **CONTENTS.**—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; **[and]**

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion**[.]**;

(10) *a list of each memorandum of understanding in effect with the Bureau, any changes made to a memorandum of understanding since the last report was made under subsection (b), and a justification for each such change;*

(11) *with respect to each of the specific functional units and offices established under section 1013—*

(A) a detailed description of the activities of the unit or office since the last report was made under subsection (b); and

(B) an analysis of the efforts of the Bureau to achieve the duties of the unit or office; and

(12) *with respect to each specific functional units and offices established under section 1013, as well as each other unit and office with supervisory and enforcement duties, a break down of the number of political and professional career staff assigned to and employed by each unit or office at the end of the reporting period.*

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Subtitle C—Specific Bureau Authorities

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SEC. 1035. [PRIVATE EDUCATION] ASSISTANT DIRECTOR AND STUDENT LOAN OMBUDSMAN.

(a) **ESTABLISHMENT.**—**[The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman]** *The Director shall designate an individual as the Assistant Director and Student Loan Ombudsman* (in this section referred to as the “Ombudsman”) within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) **PUBLIC INFORMATION.**—**[The Secretary and the Director]** *The Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.*

(c) **FUNCTIONS OF OMBUDSMAN.**—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of

higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) ANNUAL REPORTS.—

(1) IN GENERAL.—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) SUBMISSION.—The report required by paragraph (1) shall be submitted on the same date annually to *the Director*, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) DEFINITIONS.—For purposes of this section, the terms “private education loan” and “institution of higher education” have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

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TITLE XIV—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) SHORT TITLE.—This title may be cited as the “Mortgage Reform and Anti-Predatory Lending Act”.

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] CONSUMER FINANCIAL PROTECTION BUREAU.—Subtitles A, B, C, and E and sections 1471, 1472, 1475, and 1476, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002, and come under the purview of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* for purposes of title X, including the transfer of functions and personnel under subtitle F of title X and the savings provisions of such subtitle.

(c) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—The regulations required to be prescribed under this title or the amendments made by this title shall—

(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.

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ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982

TITLE VIII—ALTERNATIVE MORTGAGE TRANSACTIONS

* * * * *

ALTERNATIVE MORTGAGE AUTHORITY.

SEC. 804. (a) In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010 in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section;

(2) with respect to credit unions, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010 in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section;

(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally charter savings and loan associations,

to the extent that such regulations are authorized by rule-making authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section; and

(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* for federally chartered housing creditors, in accordance with the rulemaking authority granted to the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* with regard to federally chartered housing creditors under provisions of law other than this section.

(b) For the purpose of determining the applicability of this section, an alternative mortgage transaction shall be deemed to be made in accordance with the applicable regulation notwithstanding the housing creditor’s failure to comply with the regulations, if—

(1) the transaction is in substantial compliance with the regulation; and

(2) within 60 days of discovering any error, the housing creditor correct such error, including making appropriate adjustments, if any, to the account.

(c) **PREEMPTION OF STATE LAW.**—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.

(d) **BUREAU ACTIONS.**—The **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* shall—

(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

(e) **DESIGNATED TRANSFER DATE.**—As used in this section, the term “designated transfer date” means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.

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CONSUMER CREDIT PROTECTION ACT

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

**TITLE I—CONSUMER CREDIT COST
DISCLOSURE**

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CHAPTER 1—GENERAL PROVISIONS

* * * * *

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) BUREAU.—The term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(c) The term “Bureau” refers to the Bureau of Governors of the Federal Reserve System.

(d) The term “organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term “person” means a natural person or an organization.

(f) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term “creditor” refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term “creditor” shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title. The term “creditor” includes a private educational lender (as that term is defined in section 140) for purposes of this title.

(h) The term “credit sale” refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the

aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective “consumer”, used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms “open end credit plan” and “open end consumer credit plan” mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term “adequate notice”, as used in section 133, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term “credit card” means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term “accepted credit card” means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term “cardholder” means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term “card issuer” means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term “unauthorized use”, as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term “discount” as used in section 167 means a reduction made from the regular price. The term “discount” as used in section 167 shall not mean a surcharge.

(r) The term “surcharge” as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(s) The term “State” refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term “agricultural purposes” includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term “agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term “material disclosures” means the disclosure, as required by this title, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 129(a).

(w) The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term “residential mortgage transaction” means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer’s dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 167, the term “regular price” means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder’s open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Bureau under this title or the provision thereof in question.

(aa) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

(bb) HIGH-COST MORTGAGE.—

(1) DEFINITION.—

(A) IN GENERAL.—The term “high-cost mortgage”, and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer’s prin-

principal dwelling, other than a reverse mortgage transaction, if—

(i) in the case of a credit transaction secured—

(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction;

(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; or

(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Bureau shall prescribe by regulation); or

(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

(i) any premium provided by an agency of the Federal Government or an agency of a State;

(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

(iii) any premium paid by the consumer after closing.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subparagraph, the Bureau may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Bureau determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A)—

(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Bureau shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;

(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

- (ii) the creditor receives no direct or indirect compensation; and
 - (iii) the charge is paid to a third party unaffiliated with the creditor; and
 - (D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;
 - (E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;
 - (F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and
 - (G) such other charges as the Bureau determines to be appropriate.
- (5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.
- (6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.
- (cc) The term “reverse mortgage transaction” means a non-recourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer’s principal dwelling—
- (1) securing one or more advances; and
 - (2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—
 - (A) the transfer of the dwelling;
 - (B) the consumer ceases to occupy the dwelling as a principal dwelling; or
 - (C) the death of the consumer.
- (dd) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—
- (1) COMMISSION.—Unless otherwise specified, the term “Commission” means the Federal Trade Commission.
 - (2) MORTGAGE ORIGINATOR.—The term “mortgage originator”—
 - (A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—
 - (i) takes a residential mortgage loan application;

(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

(iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is—

(i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

(ii) a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable—

(I) does not receive compensation or gain for engaging in activities described in subparagraph (A) that is in excess of any compensation or gain received in a comparable cash transaction;

(II) discloses to the consumer—

(aa) in writing any corporate affiliation with any creditor; and

(bb) if the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(III) does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs).

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable

annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Bureau may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.**—The term “Nationwide Mortgage Licensing System and Registry” has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(4) **OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.**—For purposes of this subsection, a person “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) **RESIDENTIAL MORTGAGE LOAN.**—The term “residential mortgage loan” means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

(6) **SECRETARY.**—The term “Secretary”, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) **SERVICER.**—The term “servicer” has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

(ee) **BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.**—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point—

(A) the average prime offer rate, as defined in section 129C; or

- (B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).
- (2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points—
 - (A) the average prime offer rate, as defined in section 129C; or
 - (B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).
- (3) For purposes of paragraph (1), the term “bona fide discount points” means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.
- (4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

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TITLE VI—CONSUMER CREDIT REPORTING

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§ 603. Definitions and rules of construction

- (a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.
- (b) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.
- (c) The term “consumer” means an individual.
- (d) CONSUMER REPORT.—
 - (1) IN GENERAL.—The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—
 - (A) credit or insurance to be used primarily for personal, family, or household purposes;
 - (B) employment purposes; or
 - (C) any other purpose authorized under section 604.
 - (2) EXCLUSIONS.—Except as provided in paragraph (3), the term “consumer report” does not include—

(A) subject to section 624, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615; or

(D) a communication described in subsection (o) or (x).

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term “investigative consumer report” means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third

parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term “file”, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term “employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) MEDICAL INFORMATION.—The term “medical information”—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the payment for the provision of health care to an individual.

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer’s residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) DEFINITIONS RELATING TO CHILD SUPPORT OBLIGATIONS.—

(1) OVERDUE SUPPORT.—The term “overdue support” has the meaning given to such term in section 466(e) of the Social Security Act.

(2) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—

The term “State or local child support enforcement agency” means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) ADVERSE ACTION.—

(1) ACTIONS INCLUDED.—The term “adverse action”—

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D); and

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated

by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii); and

(II) adverse to the interests of the consumer.

(2) **APPLICABLE FINDINGS, DECISIONS, COMMENTARY, AND ORDERS.**—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Bureau or any court shall apply.

(l) **FIRM OFFER OF CREDIT OR INSURANCE.**—The term “firm offer of credit or insurance” means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer’s application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) **Verification**—

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer’s application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) **CREDIT OR INSURANCE TRANSACTION THAT IS NOT INITIATED BY THE CONSUMER.**—The term “credit or insurance transaction that is not initiated by the consumer” does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) **STATE.**—The term “State” means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) **EXCLUDED COMMUNICATIONS.**—A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS.—The term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

- (1) Public record information.
 - (2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.
- (q) DEFINITIONS RELATING TO FRAUD ALERTS.—
- (1) ACTIVE DUTY MILITARY CONSUMER.—The term “active duty military consumer” means a consumer in military service who—
 - (A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and
 - (B) is assigned to service away from the usual duty station of the consumer.
 - (2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms “fraud alert” and “active duty alert” mean a statement in the file of a consumer that—
 - (A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and
 - (B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.
 - (3) IDENTITY THEFT.—The term “identity theft” means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.
 - (4) IDENTITY THEFT REPORT.—The term “identity theft report” has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—
 - (A) that alleges an identity theft;
 - (B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau; and
 - (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.
 - (5) NEW CREDIT PLAN.—The term “new credit plan” means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.
- (r) CREDIT AND DEBIT RELATED TERMS—
- (1) CARD ISSUER.—The term “card issuer” means—
 - (A) a credit card issuer, in the case of a credit card; and
 - (B) a debit card issuer, in the case of a debit card.
 - (2) CREDIT CARD.—The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.
 - (3) DEBIT CARD.—The term “debit card” means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transfer-

ring money between accounts or obtaining money, property, labor, or services.

(4) ACCOUNT AND ELECTRONIC FUND TRANSFER.—The terms “account” and “electronic fund transfer” have the same meanings as in section 903 of the Electronic Fund Transfer Act.

(5) CREDIT AND CREDITOR.—The terms “credit” and “creditor” have the same meanings as in section 702 of the Equal Credit Opportunity Act.

(s) FEDERAL BANKING AGENCY.—The term “Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(t) FINANCIAL INSTITUTION.—The term “financial institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

(u) RESELLER.—The term “reseller” means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) COMMISSION.—The term “Commission” means the Bureau.

(w) The term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(x) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—The term “nationwide specialty consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

- (1) medical records or payments;
- (2) residential or tenant history;
- (3) check writing history;
- (4) employment history; or
- (5) insurance claims.

(y) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

- (i) suspected misconduct relating to employment; or
- (ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer’s credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

- (i) to the employer or an agent of the employer;
- (ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;
- (iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;
- (iv) as otherwise required by law; or
- (v) pursuant to section 608.

(2) **SUBSEQUENT DISCLOSURE.**—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) **SELF-REGULATORY ORGANIZATION DEFINED.**—For purposes of this subsection, the term “self-regulatory organization” includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

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TITLE VII—EQUAL CREDIT OPPORTUNITY

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§ 702. Definitions

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term “applicant” means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(d) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term “creditor” means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term “person” means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Bureau under this title or the provision thereof in question.

* * * * *

§ 706. Civil liability

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, in addition to any actual damages provided in subsection (a), except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

(d) In the case of any successful action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) No provision of this title imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than 5 years after the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforcement proceeding within 5 years after the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within 5 years after the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (9) of section 704(a) shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a). Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 701(a).

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

(j) Nothing in this title shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(k) NOTICE TO HUD OF VIOLATIONS.—Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a)—

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this title has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g),

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.

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TITLE VIII—DEBT COLLECTION PRACTICES

* * * * *

§ 803. Definitions

As used in this title—

(1) The term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

(4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fidu-

ciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.

(8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

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TITLE IX—ELECTRONIC FUND TRANSFERS

* * * * *

§ 903. Definitions

As used in this title—

(1) the term “accepted card or other means of access” means a card, code, or other means of access to a consumer’s account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term “account” means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Bureau, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(4) the term “Board” means the Board of Governors of the Federal Reserve System;

(4) the term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*;

(5) the term “business day” means any day on which the offices of the consumer’s financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(6) the term “consumer” means a natural person;

(7) the term “electronic fund transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller ma-

chine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

- (A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;
 - (B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;
 - (C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;
 - (D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or
 - (E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;
- as determined under regulations of the Bureau;

(8) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(9) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(10) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(11) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(12) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person

acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

* * * * *

§ 916. Civil liability

(a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or the Board, notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

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SEC. 921. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

(1) REGULATORY AUTHORITY OVER INTERCHANGE TRANSACTION FEES.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

(2) REASONABLE INTERCHANGE TRANSACTION FEES.—The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(3) RULEMAKING REQUIRED.—

(A) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(B) INFORMATION COLLECTION.—The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs in-

curred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

(4) CONSIDERATIONS; CONSULTATION.—In prescribing regulations under paragraph (3)(A), the Board shall—

(A) consider the functional similarity between—

(i) electronic debit transactions; and

(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

(B) distinguish between—

(i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(5) ADJUSTMENTS TO INTERCHANGE TRANSACTION FEES FOR FRAUD PREVENTION COSTS.—

(A) ADJUSTMENTS.—The Board may allow for an adjustment to the fee amount received or charged by an issuer under paragraph (2), if—

(i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

(ii) the issuer complies with the fraud-related standards established by the Board under subparagraph (B), which standards shall—

(I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and

(II) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

(B) RULEMAKING REQUIRED.—

(i) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for making adjustments under this paragraph.

(ii) FACTORS FOR CONSIDERATION.—In issuing the standards and prescribing regulations under this paragraph, the Board shall consider—

(I) the nature, type, and occurrence of fraud in electronic debit transactions;

(II) the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;

(III) the available and economical means by which fraud on electronic debit transactions may be reduced;

(IV) the fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(VI) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and

(VII) such other factors as the Board considers appropriate.

(6) EXEMPTION FOR SMALL ISSUERS.—

(A) IN GENERAL.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than \$10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

(B) DEFINITION.—For purposes of this paragraph, the term “issuer” shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

(7) EXEMPTION FOR GOVERNMENT-ADMINISTERED PAYMENT PROGRAMS AND RELOADABLE PREPAID CARDS.—

(A) IN GENERAL.—This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds,

monetary value, or other assets that have been provided pursuant to such program; or

(ii) a plastic card, payment code, or device that is—

(I) linked to funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

(IV) used to transfer or debit funds, monetary value, or other assets; and

(V) reloadable and not marketed or labeled as a gift card or gift certificate.

(B) EXCEPTION.—Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer's designated automated teller machine network.

(C) DEFINITION.—For purposes of subparagraph (B), the term “designated automated teller machine network” means either—

(i) all automated teller machines identified in the name of the issuer; or

(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer's customers.

(D) REPORTING.—Beginning 12 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall annually provide a report to the Congress regarding —

(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

(8) REGULATORY AUTHORITY OVER NETWORK FEES.—

(A) IN GENERAL.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.

(B) LIMITATION.—The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

(C) RULEMAKING REQUIRED.—The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A).

(9) EFFECTIVE DATE.—This subsection shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010.

(b) LIMITATION ON PAYMENT CARD NETWORK RESTRICTIONS.—

(1) PROHIBITIONS AGAINST EXCLUSIVITY ARRANGEMENTS.—

(A) NO EXCLUSIVE NETWORK.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

(i) 1 such network; or

(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

(I) affiliated persons; or

(II) networks affiliated with such issuer.

(B) NO ROUTING RESTRICTIONS.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

(2) LIMITATION ON RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—

(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

(B) **LAWFUL DISCOUNTS.**—For purposes of this paragraph, the network may not penalize any person for the providing of a discount that is in compliance with Federal law and applicable State law.

(3) **LIMITATION ON RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.**—

(A) **IN GENERAL.**—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that —

(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

(II) such minimum dollar value does not exceed \$10.00; or

(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

(B) **INCREASE IN MINIMUM DOLLAR AMOUNT.**—The Board may, by regulation prescribed pursuant to section 553 of title 5, United States Code, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

(4) **RULE OF CONSTRUCTION.**—No provision of this subsection shall be construed to authorize any person—

(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

(c) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

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

(2) **DEBIT CARD.**—The term “debit card”—

- (A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;
- (B) includes a general-use prepaid card, as that term is defined in section 915(a)(2)(A); and
- (C) does not include paper checks.
- (3) CREDIT CARD.—The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.
- (4) DISCOUNT.—The term “discount”—
- (A) means a reduction made from the price that customers are informed is the regular price; and
- (B) does not include any means of increasing the price that customers are informed is the regular price.
- (5) ELECTRONIC DEBIT TRANSACTION.—The term “electronic debit transaction” means a transaction in which a person uses a debit card.
- (6) FEDERAL AGENCY.—The term “Federal agency” means—
- (A) an agency (as defined in section 101 of title 31, United States Code); and
- (B) a Government corporation (as defined in section 103 of title 5, United States Code).
- (7) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).
- (8) INTERCHANGE TRANSACTION FEE.—The term “interchange transaction fee” means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.
- (9) ISSUER.—The term “issuer” means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.
- (10) NETWORK FEE.—The term “network fee” means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.
- (11) PAYMENT CARD NETWORK.—The term “payment card network” means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.
- (d) ENFORCEMENT.—
- (1) IN GENERAL.—Compliance with the requirements imposed under this section shall be enforced under section 918.
- (2) EXCEPTION.—Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section.

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EXPEDITED FUNDS AVAILABILITY ACT

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**TITLE VI—EXPEDITED FUNDS
AVAILABILITY**

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SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.**(a) NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.—**

(1) CASH DEPOSITS; WIRE TRANSFERS.—Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution, such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued.

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first \$200 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same

depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) PERMANENT SCHEDULE.—

(1) AVAILABILITY OF FUNDS DEPOSITED BY LOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) AVAILABILITY OF FUNDS DEPOSITED BY NONLOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) TIME PERIOD ADJUSTMENTS FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) 5 P.M. CASH AVAILABILITY.—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) \$200 AVAILABILITY.—Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository insti-

tution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) TEMPORARY SCHEDULE.—

(1) AVAILABILITY OF LOCAL CHECKS.—

(A) IN GENERAL.—Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) TIME PERIOD ADJUSTMENT FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(i) IN GENERAL.—Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) 5 P.M. CASH AVAILABILITY.—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) \$200 AVAILABILITY.—Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) AVAILABILITY OF NONLOCAL CHECKS.—Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) TIME PERIOD ADJUSTMENTS.—

(1) REDUCTION GENERALLY.—Notwithstanding any other provision of law, the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository

institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) EXTENSION FOR CERTAIN DEPOSITS IN NONCONTIGUOUS STATES OR TERRITORIES.—Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) DEPOSITS AT AN ATM.—

(1) NONPROPRIETARY ATM.—

(A) IN GENERAL.—Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) DEPOSITS DESCRIBED IN THIS PARAGRAPH.—A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2);

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(2) PROPRIETARY ATM—TEMPORARY AND PERMANENT SCHEDULES.—The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) STUDY AND REPORT ON ATM'S.—The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) CHECK RETURN; NOTICE OF NONPAYMENT.—No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

SEC. 604. SAFEGUARD EXCEPTIONS.

(a) **NEW ACCOUNTS.**—Notwithstanding section 603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, may establish) beginning on the date such account is established—

(1) **NEXT BUSINESS DAY AVAILABILITY OF CASH AND CERTAIN ITEMS.**—Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account;

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and

(D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2),

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) **AVAILABILITY OF OTHER ITEMS.**—In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraphs (1) of section 603(e).

(3) **LIMITATION RELATING TO CERTAIN CHECKS IN EXCESS OF \$5,000.**—In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

(A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) **LARGE OR REDEPOSITED CHECKS; REPEATED OVERDRAFTS.**—The Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 603 for—

(1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—In accordance with regulations which the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, shall prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) BASIS FOR DETERMINATION.—No determination under this subsection may be based on any class of checks or persons.

(3) OVERDRAFT FEES.—If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) COMPLIANCE.—Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) EMERGENCY CONDITIONS.—Subject to such regulations as the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, may prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) PREVENTION OF FRAUD LOSSES.—

(1) IN GENERAL.—The Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board, jointly with the Director

of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) SUNSET PROVISION.—No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) REPORT TO CONGRESS.—

(A) NOTICE OF EACH SUSPENSION.—Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS OF REPORT.—Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) NOTICE OF EXCEPTION; AVAILABILITY WITHIN REASONABLE TIME.—

(1) IN GENERAL.—If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the time period within which the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*.

(2) TIME FOR NOTICE.—The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the deposi-

tory institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) SUBSEQUENT DETERMINATIONS.—If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

SEC. 605. DISCLOSURE OF FUNDS AVAILABILITY POLICIES.

(a) NOTICE FOR NEW ACCOUNTS.—Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) PREPRINTED DEPOSIT SLIPS.—All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, in regulations, that deposited items may not be available for immediate withdrawal.

(c) MAILING OF NOTICE.—

(1) FIRST MAILING AFTER ENACTMENT.—In the first regularly scheduled mailing to customers occurring after the effective date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institu-

tion has provided a disclosure which meets the requirements of this section before such effective date.

(2) **SUBSEQUENT CHANGES.**—A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) **UPON REQUEST.**—Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) **POSTING OF NOTICE.**—

(1) **SPECIFIC NOTICE AT MANNED TELLER STATIONS.**—Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) **GENERAL NOTICE AT AUTOMATED TELLER MACHINES.**—In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) **NOTICE OF INTEREST PAYMENT POLICY.**—If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) **MODEL DISCLOSURE FORMS.**—

(1) **PREPARED BY BOARD AND BUREAU.**—The Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) **USE OF FORMS TO ACHIEVE COMPLIANCE.**—A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, jointly with the Director of the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) VOLUNTARY USE.—Nothing in this title requires the use of any such model form or clause prescribed by the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, under this subsection.

(4) NOTICE AND COMMENT.—Model disclosure forms and clauses shall be adopted by the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

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SEC. 609. REGULATIONS AND REPORTS BY BOARD.

(a) IN GENERAL.—After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board, jointly with the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, shall prescribe regulations—

(1) to carry out the provisions of this title;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) REGULATIONS RELATING TO IMPROVEMENT OF CHECK PROCESSING SYSTEM.—In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks,

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determine whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository

institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) REGULATORY RESPONSIBILITY OF BOARD FOR PAYMENT SYSTEM.—

(1) RESPONSIBILITY FOR PAYMENT SYSTEM.—In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) REGULATIONS.—The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) REPORTS.—

(1) IMPLEMENTATION PROGRESS REPORTS.—

(A) REQUIRED REPORTS.—The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) CONTENTS OF REPORT.—Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2) EVALUATION OF TEMPORARY SCHEDULE REPORT.—

(A) REPORT REQUIRED.—The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) CONTENTS OF REPORT.—Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) COMPTROLLER GENERAL EVALUATION REPORT.—Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to

the Congress evaluating the implementation and administration of this title.

(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.

(f) ELECTRONIC CLEARINGHOUSE STUDY.—

(1) STUDY REQUIRED.—The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) CONSULTATION; FACTORS TO BE STUDIED.—In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) REPORT REQUIRED.—The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

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FEDERAL DEPOSIT INSURANCE ACT

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SEC. 8. (a) TERMINATION OF INSURANCE.—

(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

(A) a national member bank;

(B) a State member bank;

(C) a Federal branch;

(D) a Federal savings association; or

(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) INVOLUNTARY TERMINATION.—

(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

(ii) an insured depository institution is in an unsafe or unsound condition to continue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

(B) NOTICE OF INTENTION TO TERMINATE INSURANCE.—If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institution's insured status.

(3) HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been es-

tablished, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

(4) APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

(5) JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

(6) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

(7) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

(8) TEMPORARY SUSPENSION OF INSURANCE.—

(A) IN GENERAL.—If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the

capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—

(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL.—In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

(ii) SUSPENSION ORDER.—The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Comptroller of the Currency to enforce a contractual provision which authorizes the Corporation or the Comptroller of the Currency, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.

(C) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until

the Corporation dismisses the proceedings under paragraph (3).

(D) JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

(E) CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS.—The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this Act.

(F) PUBLICATION OF ORDER.—The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

(G) NOTICE BY CORPORATION.—If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

(H) LACK OF NOTICE.—Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

- (i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or
- (ii) such depositor did not have actual knowledge of the suspension of insurance.

(9) FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

(10) LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that

the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party, or any written agreement entered into with the agency, the appropriate Federal banking agency for the depository institution may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act shall apply to any bank holding company, and to any "subsidiary" (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956, any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 10 of Home Owners' Loan Act), any noninsured State member bank and to any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal

banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank) or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution).

(4) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act shall apply to any foreign bank or company to which subsection (a) of section 8 of the International Banking Act of 1978 applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term "subsidiary" shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956.

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the Comptroller of the Currency, to any national banking association chartered by the Comptroller of the Currency, including an uninsured association.

(6) **AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.**—The authority to issue an order under this subsection and subsection (c) which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) **UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.**—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset

quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9)

(10) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(c)(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (b)(6). Such order shall become effective upon service upon the depository institution or such party participating in the conduct of the affairs of such depository institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the depository institution or such party, until the effective date of such order.

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) specifies, on the basis of particular

facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—

(A) TEMPORARY ORDER.—

(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) specifies on the basis of particular facts that any person engaged or is engaging in conduct described in section 18(a)(4), the Corporation or other appropriate Federal banking agency may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation or other appropriate Federal banking agency dismisses the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Any violation of section 18(a)(4) shall be subject to civil money penalties, as set forth in subsection (i), except that for any person other than an insured depository institution or an institution-affiliated party that is found to have violated this paragraph, the Corporation or other appropriate Federal banking agency shall not be required to demonstrate any loss to an insured depository institution.

(d) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of the section, the appropriate Federal banking agency may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(e) REMOVAL AND PROHIBITION AUTHORITY.—

(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or request by such depository institution or institution-affiliated party; or

(IV) any written agreement between such depository institution and such agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution, the appropriate Federal banking agency for the depository institution may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, and such violation was not inadvertent or unintentional;

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii);

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act; or

(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company or of a subsidiary (other than a savings association) of a savings and loan holding company has been convicted of any criminal offense involving dishonesty or a breach of trust or a criminal offense under section 1956, 1957, or 1960 of title 18, United States Code, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,

the agency may serve upon such party, officer, or director a written notice of the agency's intention to remove such party from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term “officer” within the term “institution-affiliated party” as used in this subsection means an employee or officer with management functions, and the term “director” within the term “institution-affiliated party” as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g), has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(9);

(iii) any insured credit union under the Federal Credit Union Act;

(iv) any institution chartered under the Farm Credit Act of 1971;

(v) any appropriate Federal depository institution regulatory agency; and

(vi) the Federal Housing Finance Agency and any Federal home loan bank.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person

who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (j), the term “appropriate Federal financial institutions regulatory agency” means—

(i) the appropriate Federal banking agency, in the case of an insured depository institution;

(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act); and

(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Agency and any Federal home loan bank.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.

(f) Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party is the subject of any information, indictment, or complaint, involving the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), by written notice served upon

such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any depository institution.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon any depository institution that the subject of the notice is affiliated with at the time the notice is issued.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the agency.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon any depository institution that the subject of the order is affiliated with at the time the order is issued, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the agency from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in depository institution

affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.

(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term “relevant depository institution” means any depository institution of which the party is or was an institution-affiliated party at the time at which—

- (i) the information, indictment, or complaint described in subparagraph (A) was issued; or
- (ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank’s depositors or threaten to impair public confidence in the depository institution. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency’s decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h)(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(i)(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 38 or 39, and such courts shall have jurisdic-

tion and power to order and require compliance herewith; but except as otherwise provided in this section or under section 38 or 39 no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured depository institution which, and any institution-affiliated party who—

- (i) violates any law or regulation;
- (ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) or any final order under section 38 or 39;
- (iii) violates any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party; or
- (iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

- (i)(I) commits any violation described in any clause of subparagraph (A);
- (II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or
- (III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

- (I) is part of a pattern of misconduct;
- (II) causes or is likely to cause more than a minimal loss to such depository institution; or
- (III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

(i) knowingly—

- (I) commits any violation described in any clause of subparagraph (A);
- (II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or
- (III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under

subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured depository institution, an amount to not exceed \$1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

(I) \$1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity

and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this paragraph).

(4) PREJUDGMENT ATTACHMENT.—

(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 11(d)(18)) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD.—

(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.

(j) CRIMINAL PENALTY.—Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of—

- (1) any insured depository institution;
- (2) any institution treated as an insured bank under subsection (b)(3) or (b)(4);
- (3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act); or
- (4) any institution chartered under the Farm Credit Act of 1971,

shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(l) Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

(m) In connection with any proceeding under subsection (b), (c)(1), or (e) of this section involving an insured State bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the agency may proceed as provided in this section. No bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(n) In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 10(c), the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith.

Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both.

(o) Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of section 9 of the Federal Reserve Act, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (c) or (d) of section 4, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation.

(p) Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose li-

abilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the assessment period in which the assumption takes effect.

(r)(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF DEPOSITORY INSTITUTION TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) IN GENERAL.—Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured depository institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(t) AUTHORITY OF FDIC TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

(1) RECOMMENDING ACTION BY APPROPRIATE FEDERAL BANKING AGENCY.—The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 7(j), this section, or section 18(j) with respect to any insured depository institution, any depository institution holding company, or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) FDIC'S AUTHORITY TO ACT IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) the insured depository institution is in an unsafe or unsound condition;

(B) the institution or institution-affiliated party is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution or institution-affiliated party from continuing such practices;

(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the Deposit Insurance Fund, or may prejudice the interests of the institution's depositors or

(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund;

(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

(A) AUTHORITY TO ACT.—The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

(4) CORPORATION'S POWERS; INSTITUTION'S DUTIES.—For purposes of this subsection—

(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corporation as the institution and its affiliates have with respect to the appropriate Federal banking agency.

(5) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

(A) SUBMISSION OF REQUESTS.—A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution or institution-affiliated party shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

(B) AGENCIES REQUIRED TO REPORT ON REQUESTS.—Each appropriate Federal banking agency shall report semi-annually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.

(6) POWERS AND DUTIES WITH RESPECT TO DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of exercising the backup authority provided in this subsection—

(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.

(6) REFERRAL TO [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.

(u) PUBLIC DISCLOSURES OF FINAL ORDERS AND AGREEMENTS.—

(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) TRANSCRIPT OF HEARING.—A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(4) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(5) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The appropriate Federal banking agency may file

any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(6) RETENTION OF DOCUMENTS.—Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(7) DISCLOSURES TO CONGRESS.—No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(v) FOREIGN INVESTIGATIONS.—

(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES.—In conducting any investigation, examination, or enforcement action under this Act, the appropriate Federal banking agency may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES.—

(A) IN GENERAL.—Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) INVESTIGATION BY FEDERAL BANKING AGENCY.—Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

(C) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) TREATMENT OF FOREIGN BANKING AUTHORITY.—For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency,

the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) RULE OF CONSTRUCTION.—Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(w) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

(1) IN GENERAL.—

(A) CONVICTION OF TITLE 18 OFFENSES.—

(i) DUTY TO NOTIFY.—If an insured State depository institution has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

(B) CONVICTION OF TITLE 31 OFFENSES.—If an insured State depository institution is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

(C) NOTICE TO STATE SUPERVISOR.—The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board of Directors shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1), where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

(4) TEMPORARY INSURANCE OF PREVIOUSLY INSURED DEPOSITS.—Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with subsection (a)(7).

(5) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(6) DEFINITION.—The term “senior executive officer” has the same meaning as in regulations prescribed under section 32(f) of this Act.

* * * * *

SEC. 11. (a) DEPOSIT INSURANCE.—

(1) INSURED AMOUNTS PAYABLE.—

(A) IN GENERAL.—The Corporation shall insure the deposits of all insured depository institutions as provided in this Act.

(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 7(i) or any funds described in section 7(i)(3).

(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(iii) DEFINITIONS.—For purposes of this subparagraph, the following definitions shall apply:

(I) CAPITAL STANDARDS.—The terms “well capitalized” and “adequately capitalized” have the same meanings as in section 38.

(II) EMPLOYEE BENEFIT PLAN.—The term “employee benefit plan” has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

(III) PASS-THROUGH DEPOSIT INSURANCE.—The term “pass-through deposit insurance” means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.

(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term “standard maximum deposit insurance amount” means \$250,000, adjusted as provided under subparagraph (F) after March 31, 2010. Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to \$250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this Act. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the

Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) \$100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) ROUNDING.—If the amount determined under clause (i) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) INFLATION ADJUSTMENT CONSIDERATION.—In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

(II) potential problems affecting insured depository institutions; or

(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.

(2) GOVERNMENT DEPOSITORS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

(i) a government depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (B); and

(ii) except as provided in subparagraph (C), the deposits of a government depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) GOVERNMENT DEPOSITOR.—In this paragraph, the term “government depositor” means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution.

(C) **AUTHORITY TO LIMIT DEPOSITS.**—The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any government depositor on the basis of the size of any such bank in terms of its assets: *Provided, however,* such limitation may be exceeded by the pledging of acceptable securities to the government depositor when and where required.

(3) **CERTAIN RETIREMENT ACCOUNTS.**—

(A) **IN GENERAL.**—Notwithstanding any limitation in this Act relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986;

(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of such Code; and

(iii) any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act, and any plan described in section 401(d) of the Internal Revenue Code of 1986, to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed \$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph) per participant per insured depository institution.

(B) **AMOUNTS TAKEN INTO ACCOUNT.**—For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) **DEPOSIT INSURANCE FUND.**—

(A) **ESTABLISHMENT.**—There is established the Deposit Insurance Fund, which the Corporation shall—

(i) maintain and administer;

(ii) use to carry out its insurance purposes, in the manner provided by this subsection; and

(iii) invest in accordance with section 13(a).

(B) **USES.**—The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) **LIMITATION ON USE.**—Notwithstanding any provision of law other than section 13(c)(4)(G), the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

(i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

(iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B)) another insured depository institution.

(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

(5) CERTAIN INVESTMENT CONTRACTS NOT TREATED AS INSURED DEPOSITS.—

(A) IN GENERAL.—A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.—The term “benefit-responsive withdrawals or transfers” means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) EMPLOYEE BENEFIT PLAN.—The term “employee benefit plan”—

(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974; and

(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(b) For the purposes of this Act an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as con-

servator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) FEDERAL DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT.—

(i) CONSERVATOR.—The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) RECEIVER.—The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law.

(B) ADDITIONAL POWERS.—In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation's rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) INSURED STATE DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT BY APPROPRIATE STATE SUPERVISOR.—Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) ADDITIONAL POWERS.—In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an ap-

pointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) APPOINTMENT OF CORPORATION BY THE CORPORATION.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

(i) that—

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

(i) existed with respect to such institution at the time—

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time—

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER.—The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

(D) CEASE AND DESIST ORDERS.—Any willful violation of a cease-and-desist order which has become final.

(E) CONCEALMENT.—Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) INABILITY TO MEET OBLIGATIONS.—The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) LOSSES.—The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 38(b)) without Federal assistance.

(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) CONSENT.—The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) CESSATION OF INSURED STATUS.—The institution ceases to be an insured institution.

(K) UNDERCAPITALIZATION.—The institution is undercapitalized (as defined in section 38(b)), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 38(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 38(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 38(e)(2).

(L) The institution—

(i) is critically undercapitalized, as defined in section 38(b); or

(ii) otherwise has substantially insufficient capital.

(M) MONEY LAUNDERING OFFENSE.—The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

(6) APPOINTMENT BY COMPTROLLER OF THE CURRENCY.—

(A) CONSERVATOR.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed conservator and the Corporation may accept any such appointment.

(B) RECEIVER.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.

(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) REPLACEMENT TREATED AS REMOVAL OF INCUMBENT.—The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED.—The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 38.—

(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 38.

(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of

an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 38(f)(2)(A)(iii).

(13) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—

(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS.—

(A) SUCCESSOR TO INSTITUTION.—The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(B) OPERATE THE INSTITUTION.—The Corporation may (subject to the provisions of section 40), as conservator or receiver—

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such institution.

(C) FUNCTIONS OF INSTITUTION'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) POWERS AS CONSERVATOR.—The Corporation may, as conservator, take such action as may be—

(i) necessary to put the insured depository institution in a sound and solvent condition; and

(ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

(E) ADDITIONAL POWERS AS RECEIVER.—The Corporation may (subject to the provisions of section 40), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) ORGANIZATION OF NEW INSTITUTIONS.—The Corporation may, as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—The Corporation may, as conservator or receiver—

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust busi-

ness) without any approval, assignment, or consent with respect to such transfer.

(ii) APPROVAL BY APPROPRIATE FEDERAL BANKING AGENCY.—No transfer described in clause (i)(II) may be made to another depository institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this Act.

(I) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 8(n), and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) AUTHORITY OF BOARD OF DIRECTORS.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 21A(b)(4), only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 10(c) of this Act.

(J) INCIDENTAL POWERS.—The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this Act, which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property manage-

ment, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) FINAL SETTLEMENT PAYMENT PROCEDURE.—

(i) IN GENERAL.—In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

(ii) FINAL SETTLEMENT PAYMENT.—For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) FINAL SETTLEMENT PAYMENT RATE.—For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appro-

appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) CORPORATION AUTHORITY.—The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the depository institution's books;
- (II) in the claim filed by the claimant; or
- (III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) ALLOWANCE OF PROVEN CLAIMS.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the institution.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(II) any security interest in the assets of the institution securing any such extension of credit.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) PROVISION FOR AGENCY REVIEW OR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) STATUTE OF LIMITATIONS.—If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) REVIEW OF CLAIMS.—

(A) ADMINISTRATIVE HEARING.—If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code.

(B) OTHER REVIEW PROCEDURES.—

(i) IN GENERAL.—The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Corporation may establish both binding and non-binding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) CONSIDERATION OF INCENTIVES.—The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any de-

pository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) AGREEMENT AS BASIS OF CLAIM.—

(A) REQUIREMENTS.—Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 13(e) shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) EXCEPTION TO CONTEMPORANEOUS EXECUTION REQUIREMENT.—Notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal

home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act.

(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) DEPOSITOR PREFERENCE.—

(A) IN GENERAL.—Subject to section 5(e)(2)(C), amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

- (i) Administrative expenses of the receiver.
- (ii) Any deposit liability of the institution.
- (iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).
- (iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).
- (v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) EFFECT ON STATE LAW.—

(i) IN GENERAL.—The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

(ii) PROCEDURE FOR DETERMINATION OF INCONSISTENCY.—Upon the Corporation's own motion or upon

the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) JUDICIAL REVIEW.—The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code.

(C) ACCOUNTING REPORT.—Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver,

in any judicial action or proceeding to which such institution is or becomes a party.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Corporation as conservator or receiver shall—

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including as-

sets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 13(d)(1), the Corporation shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(14) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim (other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act), the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or re-

ceiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) CONTRACTS WITH STATE HOUSING FINANCE AUTHORITIES.—

(A) IN GENERAL.—The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) FACTORS TO CONSIDER.—In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

- (i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;
- (ii) the State housing finance authority's ability to further national housing policies;
- (iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;
- (iv) the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;
- (v) the minimization of future guaranties which may be required of the Federal Government;
- (vi) the maximization of mortgage related asset values; and
- (vii) the utilization of institutions currently established in mortgage related asset market activities.

(17) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or
- (ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

- (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13); or

(B) any conservator appointed by the Comptroller of the Currency,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (i) except as otherwise specifically provided in this section.

(4) LEASES UNDER WHICH THE INSTITUTION IS THE LESSEE.—

(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (i).

(5) LEASES UNDER WHICH THE INSTITUTION IS THE LESSOR.—

(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 13(e)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (d) and (i); and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this Act (other than subsection (d)(9) of this section and section 13(e)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (d)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract

with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction

referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward

contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only

with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term “qualified foreign government security” means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution’s equity of redemption.

(ix) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than subsections (d)(9) and (e)(10) of this section, and section 13(e) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency

of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency,

to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term “clearing organization” has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE DEPOSITORY INSTITUTIONS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the depository institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the

avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section or section 15, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11, United States Code.

(14) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) NOTIFICATION REQUIRED.—An undercapitalized insured depository institution (as defined in section 38) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) WAIVER BY CORPORATION.—The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the Deposit Insurance Fund; and

(ii) provides a written waiver to the selling institution.

(C) EFFECT OF WAIVER ON SUCCESSORS.—

(i) IN GENERAL.—If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

(ii) EXCEPTION.—Clause (i)(II) does not—

(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

(II) require the acquirer to restrict any pre-existing relationship between the acquirer and a customer; or

(III) apply to any transaction in which the acquirer acquires only insured deposits.

(D) WAIVER NOT ACTIONABLE.—The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

(E) OTHER AUTHORITY NOT AFFECTED.—This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(16) CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

(A) IN GENERAL.—If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to

the institution under this section or section 13 from using the list, except as permitted under the agreement.

(B) FRAUDULENT TRANSACTIONS EXCLUDED.—Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(f) PAYMENT OF INSURED DEPOSITS.—

(1) IN GENERAL.—In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor.

(2) PROOF OF CLAIMS.—The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

(3) RESOLUTION OF DISPUTES.—A determination by the Corporation regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

(4) REVIEW OF CORPORATION DETERMINATION.—A final determination made by the Corporation regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

(5) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(g) SUBROGATION OF CORPORATION.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or

branch by another insured depository institution pursuant to this section or section 13, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) DIVIDENDS ON SUBROGATED AMOUNTS.—The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) WAIVER OF CERTAIN CLAIMS.—With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) APPLICABILITY OF STATE LAW.—Subject to subsection (d)(11), if the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) CONDITIONS APPLICABLE TO RESOLUTION PROCEEDINGS.—

(1) CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED.—The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED.—The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) GUIDELINES REQUIRED.—The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) FINANCIAL SERVICES INDUSTRY IMPACT ANALYSIS.—After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 13 in connection with the resolution of such institution, the Corporation shall—

(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) and section 13(c), this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 13.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) MANNER OF PAYMENT.—The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) LIMITATION ON COURT ACTION.—Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) LIABILITY OF DIRECTORS AND OFFICERS.—A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in

part by an insured depository institution or its affiliate in connection with assistance provided under section 13, for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(1) DAMAGES.—In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) NEW DEPOSITORY INSTITUTIONS.—

(1) ORGANIZATION AUTHORIZED.—As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) ARTICLES OF ASSOCIATION.—The articles of association and the organization certificate of the new depository institution shall be executed by representatives designated by the Corporation.

(3) CAPITAL STOCK.—No capital stock need be paid in by the Corporation.

(4) EXECUTIVE OFFICER.—The new depository institution shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.

(5) SUBJECT TO LAWS RELATING TO NATIONAL BANKS.—In all other respects the new depository institution shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) NEW DEPOSITS.—The new depository institution may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new depository institution is the only depository institution in the community, shall not exceed an amount equal to the standard maximum deposit insurance amount from any depositor.

(7) INSURED STATUS.—The new depository institution, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) INVESTMENTS.—Funds of the new depository institution shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and in-

terest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

(9) CONDUCT OF BUSINESS.—The new depository institution, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this Act and as may be incidental to its organization.

(10) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the new depository institution, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) TRANSFER OF DEPOSITS.—(A) Upon the organization of a new depository institution, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such depository institution in default plus the estimated amount of the expenses of operating the new depository institution, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the insured depository institution in default, and the total expenses of operation of the new depository institution.

(12) EARNINGS.—Earnings of the new depository institution shall be paid over or credited to the Corporation in such adjustment.

(13) LOSSES.—If any new depository institution, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured depository institution, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) PAYMENT OF INSURED DEPOSITS.—(A) The new depository institution shall assume as transferred deposits the payment of the insured deposits of such depository institution in default to each of its depositors.

(B) Of the amounts so made available, the Corporation shall transfer to the new depository institution, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new depository institution on demand.

(15) ISSUANCE OF STOCK.—(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new depository institution to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new depository institution on a sound basis.

(B) The stockholders of the insured depository institution in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) ISSUANCE OF CERTIFICATE.—Upon proof that an adequate amount of capital stock in the new depository institution

has been subscribed and paid for in cash, the Comptroller of the Currency, shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank or Federal savings association, and thereafter, when the requirements of law with respect to the organization of a national bank or Federal savings association have been complied with, the Comptroller of the Currency, shall issue to the depository institution a certificate of authority to commence business, and thereupon the depository institution shall cease to have the status of a new depository institution, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks or Federal savings associations. Such depository institution shall thereafter be an insured national bank or Federal savings association, without certification to or approval by the Corporation.

(17) TRANSFER TO OTHER INSTITUTION.—If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) WINDING UP.—Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency, may require, and shall certify to the Comptroller of the Currency, the termination of the new depository institution. Thereafter the Corporation shall be liable for the obligations of such depository institution and shall be the owner of its assets.

(19) APPLICABILITY OF CERTAIN LAWS.—The provisions of sections 5220 and 5221 of the Revised Statutes shall not apply to a new depository institution under this subsection.

(n) BRIDGE DEPOSITORY INSTITUTIONS.—

(1) ORGANIZATION.—

(A) PURPOSE.—When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured depository institutions or 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations or Federal savings asso-

ciations, as applicable, subject to the provisions of this subsection, to be referred to as “bridge depository institutions”.

(B) AUTHORITIES.—Upon the granting of a charter to a bridge depository institution, the bridge depository institution may—

(i) assume such deposits of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge depository institution as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) INTERIM DIRECTORS.—A bridge depository institution shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.—A bridge depository institution shall be organized as a national bank, in the case of 1 or more insured depository institutions, and as a Federal savings association, in the case of 1 or more insured savings associations.

(2) CHARTERING.—

(A) CONDITIONS.—A national bank or Federal savings association may be chartered by the Comptroller of the Currency as a bridge depository institution only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge depository institution will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured depository institutions in default or in danger of default with respect to which the bridge depository institution is chartered;

(ii) the continued operation of such insured depository institution or banks in default or in danger of default with respect to which the bridge depository institution is chartered is essential to provide adequate banking services in the community where each such depository institution in default or in danger of default is located; or

(iii) the continued operation of such insured depository institution or banks in default or in danger of default with respect to which the bridge depository institution is chartered is in the best interest of the depositors of such depository institution or banks in default or in danger of default or the public.

(B) INSURED NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.—A bridge depository institution shall be an insured depository institution from the time it is chartered as a national bank or Federal savings association.

(C) BRIDGE BANK TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge depository institution shall be treated as an insured depository institution in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) MANAGEMENT.—A bridge depository institution, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) BYLAWS.—The board of directors of a bridge depository institution shall adopt such bylaws as may be approved by the Corporation.

(3) TRANSFER OF ASSETS AND LIABILITIES.—

(A) IN GENERAL.—

(i) TRANSFER UPON GRANT OF CHARTER.—Upon the granting of a charter to a bridge depository institution pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured depository institution in default with respect to which the bridge depository institution is chartered may transfer any assets and liabilities of such depository institution in default to the bridge depository institution in accordance with paragraph (1).

(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is granted to a bridge depository institution, the Corporation, as receiver, or any other receiver appointed with respect to an insured depository institution in default may transfer any assets and liabilities of such insured depository institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) TREATMENT OF TRUST BUSINESS.—For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured depository institution in default is included among its assets and liabilities.

(iv) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust business, of an insured depository institution in default transferred to a bridge depository institution shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) INTENT OF CONGRESS REGARDING CONTINUING OPERATIONS.—It is the intent of the Congress that, in order to

prevent unnecessary hardship or losses to the customers of any insured depository institution in default with respect to which a bridge depository institution is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the depository institution in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) POWERS OF BRIDGE BANKS.—Each bridge depository institution chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank or Federal savings association, as appropriate, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge depository institution;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge depository institution; and

(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge depository institution by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge depository institution on such terms as the Corporation determines to be appropriate;

(C) no requirement under any provision of law relating to the capital of a national bank shall apply with respect to a bridge depository institution;

(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge depository institution without regard to the amount of the bridge depository institution's capital or surplus;

(E)(i) the board of directors of a bridge depository institution shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and
(ii) the board of directors of a bridge depository institution may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge depository institution shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge depository institution at the request of the Corporation;

(H) any judicial action to which a bridge depository institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a depository institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge depository institution;

(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge depository institution in any asset of an insured depository institution in default acquired by it shall be valid against the bridge depository institution unless such agreement—

(i) is in writing,

(ii) was executed by such insured depository institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured depository institution in default,

(iii) was approved by the board of directors of such insured depository institution in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(iv) has been, continuously from the time of its execution, an official record of such insured depository institution in default;

(J) notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) except with the prior approval of the Corporation, a bridge depository institution may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) CAPITAL.—

(A) NO CAPITAL REQUIRED.—The Corporation shall not be required to—

(i) issue any capital stock on behalf of a bridge depository institution chartered under this subsection; or

(ii) purchase any capital stock of a bridge depository institution, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge depository institution in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) OPERATING FUNDS IN LIEU OF CAPITAL.—Upon the organization of a bridge depository institution, and there-

after, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge depository institution, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge depository institution in lieu of capital.

(C) AUTHORITY TO ISSUE CAPITAL STOCK.—Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge depository institution to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(D) CAPITAL LEVELS.—A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 10B(b) of the Federal Reserve Act.

(6) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge depository institution is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge depository institution are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge depository institution shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge depository institution in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) ASSISTANCE AUTHORIZED.—The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured depository institution in default, or to facilitate a bridge depository institution's acquisition of any assets or the assumption of any liabilities of an insured depository institution in default.

(8) ACQUISITION.—

(A) IN GENERAL.—The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge depository institution requiring approval under section 18(c) and if a report on competitive

factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the depository institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) BY OUT-OF-STATE HOLDING COMPANY.—Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge depository institution if the bridge depository institution at any time had assets aggregating \$500,000,000 or more, as determined by the Corporation on the basis of the bridge depository institution's reports of condition or on the basis of the last available reports of condition of any insured depository institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge depository institution. The acquiring entity may acquire the bridge depository institution only in the same manner and to the same extent as such entity may acquire an insured depository institution in default under section 13(f)(2).

(9) DURATION OF BRIDGE DEPOSITORY INSTITUTION.—Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) TERMINATION OF BRIDGE DEPOSITORY INSTITUTION STATUS.—The status of any bridge depository institution as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank or a Federal savings association, as the case may be, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank or a Federal savings association, as the case may be, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) EFFECT ON HOLDING COMPANIES.—A depository institution holding company acquiring a bridge depository institution under section 13(f), paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 13(f).

(F) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge depository institution status, if appropriate.

(12) DISSOLUTION OF BRIDGE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated

by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

(B) PROCEDURES.—The Comptroller of the Currency shall appoint the Corporation as receiver for a bridge depository institution upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge depository institution. The Corporation as such receiver shall wind up the affairs of the bridge depository institution in conformity with the provisions of law relating to the liquidation of closed national banks or Federal savings associations, as appropriate. With respect to any such bridge depository institution, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) MULTIPLE BRIDGE DEPOSITORY INSTITUTIONS.—Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge depository institutions under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single depository institution in default.

(o) SUPERVISORY RECORDS.—In addition to the requirements of section 7(a)(2) to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, DEPOSITORY INSTITUTIONS.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed \$1,000,000, to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) CONVICTED DEBTORS.—Except as provided in paragraph

(3), any person who—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, the Deposit Insurance Fund, or the Corporation,
may not purchase any asset of such institution from the conservator or receiver.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution or the Corporation.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days

after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—Consistent with section 1657 of title 18, United States Code, a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) FOREIGN INVESTIGATIONS.—The Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v); and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) AGENCIES MAY SHARE INFORMATION WITHOUT WAIVING PRIVILEGE.—

(1) IN GENERAL.—A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

(B) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term “covered agency” means any of the following:

(i) Any Federal banking agency.

(ii) The Farm Credit Administration.

(iii) The Farm Credit System Insurance Corporation.

(iv) The National Credit Union Administration.

(v) The General Accounting Office.

(vi) The **Consumer Financial Protection Bureau**.

(vii) Federal Housing Finance Agency.

(B) PRIVILEGE.—The term “privilege” includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) PURCHASE RIGHTS OF TENANTS.—

(1) NOTICE.—Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) EXCEPTIONS.—Paragraphs (1) and (2) shall not apply to—

(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

(B) any eligible single family property (as such term is defined in section 40(p)); or

(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.

(v) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to subsection (u), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p)) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

(w) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

(1) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference,

among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(A) that is made by a public agency or nonprofit organization; and

(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

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

(A) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term “eligible commercial real property” means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms “nonprofit organization” and “public agency” have the same meanings as in section 40(p).

* * * * *

SEC. 18. (a) REPRESENTATIONS OF DEPOSIT INSURANCE.—

(1) INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.—For each day that an insured depository institution continues to violate paragraph (1) or any regulation issued under paragraph (2), it shall be subject to a penalty of not more than \$100, which the Corporation may recover for its use.

(4) FALSE ADVERTISING, MISUSE OF FDIC NAMES, AND MISREPRESENTATION TO INDICATE INSURED STATUS.—

(A) PROHIBITION ON FALSE ADVERTISING AND MISUSE OF FDIC NAMES.—No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms “Federal Deposit”, “Federal Deposit Insurance”, “Federal Deposit Insurance Corporation”, any combination of such terms, or the abbreviation “FDIC” as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

(B) PROHIBITION ON MISREPRESENTATIONS OF INSURED STATUS.—No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this Act, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this Act, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.

(C) AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—The appropriate Federal banking agency shall have enforcement authority in the case of a violation of this paragraph by any person for which the agency is the appropriate Federal banking agency, or any institution-affiliated party thereof.

(D) CORPORATION AUTHORITY IF THE APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—

(i) RECOMMENDATION.—The Corporation may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 8 for purposes of enforcement of this paragraph with respect to any person for which the agency is the appropriate Federal banking agency or any institution-affiliated party thereof.

(ii) AGENCY RESPONSE.—If the appropriate Federal banking agency does not, within 30 days of the date of receipt of a recommendation under clause (i), take the enforcement action with respect to this paragraph recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the situation presented, the Corporation may take the recommended enforcement action against such person or institution-affiliated party.

(E) ADDITIONAL AUTHORITY.—In addition to its authority under subparagraphs (C) and (D), for purposes of this paragraph, the Corporation shall have, in the same manner and to the same extent as with respect to a State non-member insured bank—

(i) jurisdiction over—

(I) any person other than a person for which another agency is the appropriate Federal banking

agency or any institution-affiliated party thereof;
and

(II) any person that aids or abets a violation of this paragraph by a person described in subclause (I); and

(ii) for purposes of enforcing the requirements of this paragraph, the authority of the Corporation under—

(I) section 10(c) to conduct investigations; and

(II) subsections (b), (c), (d) and (i) of section 8 to conduct enforcement actions.

(F) OTHER ACTIONS PRESERVED.—No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State agency or individual.

(b) No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both: *Provided*, That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be “deposits” except for the proviso in section 3(1)(5) of this Act) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a Federal savings association;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank; and

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank or a State savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a “merger transaction”) shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) REPORTS ON COMPETITIVE FACTORS.—

(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

(i) request a report on the competitive factors involved from the Attorney General of the United States; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

(C) EXCEPTIONS.—A responsible agency may not be required to request a report under subparagraph (A) if—

(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the

transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term “antitrust laws” means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in *pari materia*.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) MONEY LAUNDERING.—In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.

(12) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

(C) In this paragraph—

(i) the term “interstate merger transaction” means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

(ii) the term “home State” means—

(I) with respect to a national bank, the State in which the main office of the bank is located;

(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.

(d)(1) No State nonmember insured bank shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 6 of this Act.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank’s home State (as defined in section 44(f)(4)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 13(f), 13(k), or 44.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank’s home State (as defined in section 44(f)(4)) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

(i) the bank had no branches in such State; or

(ii) the branch resulted from—

(I) an interstate merger transaction approved pursuant to section 44; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Corporation under section 13(c).

(4) STATE “OPT-IN” ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and

(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

(i) ESTABLISHMENT.—An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 44(b).

(ii) OPERATION.—Subsections (c) and (d)(2) of section 44 shall apply with respect to each branch of an insured State nonmember bank which is established and operated pursuant to an application approved under this paragraph in the same manner and to the same extent such provisions of such section apply to a branch of a State bank which resulted from a merger transaction under such section 44.

(C) DE NOVO BRANCH DEFINED.—For purposes of this paragraph, the term “de novo branch” means a branch of a State bank which—

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) HOME STATE DEFINED.—The term “home State” means the State by which a State bank is chartered.

(E) HOST STATE DEFINED.—The term “host State” means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

(f) Whenever any insured depository institution (except a national bank), after written notice of the recommendations of the Corporation based on a report of examination of such insured de-

pository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is hereby authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided*, That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than \$10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed \$100 for each day that such violation continues.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.

(i)(1) No insured State nonmember bank shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank;

(B) the Corporation if the resulting bank is to be a State nonmember insured bank; and

(C) the Corporation if the resulting institution is to be an insured State savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

(A) the financial history and condition of the bank,

- (B) the adequacy of its capital structure,
- (C) its future earnings prospects,
- (D) the general character and fitness of its management,
- (E) the convenience and needs of the community to be served, and
- (F) whether or not its corporate powers are consistent with the purposes of this Act.

(j) RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES AND INSIDERS.—

(1) TRANSACTIONS WITH AFFILIATES.—

(A) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(B) AFFILIATE DEFINED.—For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 23A and 23B) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

(2) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(3) AVOIDING EXTRATERRITORIAL APPLICATION TO FOREIGN BANKS.—

(A) TRANSACTIONS WITH AFFILIATES.—Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

(B) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

(C) FOREIGN BANK DEFINED.—For purposes of this paragraph, the term “foreign bank” has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or covered company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

- (i) the insolvency of the depository institution or covered company;
- (ii) the appointment of a conservator or receiver for the depository institution; or
- (iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 32(f)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

- (i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code; or
- (ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or covered company, and the degree to which—

- (i) the payment reasonably reflects compensation earned over the period of employment; and
- (ii) the compensation involved represents a reasonable payment for services rendered.

(3) CERTAIN PAYMENTS PROHIBITED.—No insured depository institution or covered company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such institution or covered company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

- (i) preventing the proper application of the assets of the institution to creditors; or
- (ii) preferring one creditor over another.

(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term “golden parachute payment” means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or covered company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or covered company that—

- (i) is contingent on the termination of such party’s affiliation with the institution or covered company; and
- (ii) is received on or after the date on which—

(I) the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent;

(II) any conservator or receiver is appointed for such institution;

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 32(f));

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) CERTAIN PAYMENTS NOT INCLUDED.—The term “golden parachute payment” shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term “indemnification payment” means any payment (or any agreement to make any payment) by any insured depository institution or covered company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 8(b)(6) with respect to such institution.

(B) LIABILITY OR LEGAL EXPENSE.—The term “liability or legal expense” means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) PAYMENT.—The term “payment” includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(D) COVERED COMPANY.—The term “covered company” means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution.

(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any insured depository institution or covered company, from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or covered company which is described in paragraph (5)(A).

(1) When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and

within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

(1) PROCEDURES.—When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation or the Comptroller of the Currency, as appropriate, not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency.

(2) ENFORCEMENT POWERS.—With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Comptroller of the Currency, as appropriate, shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

(B) the Corporation or the Comptroller of the Currency, as appropriate, may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Office of the Comptroller of the Currency, as appropriate, shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.

(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Deposit Insurance Fund. Prior to adopting any such regulation, the Corporation shall, in the case of a Federal savings association, consult with the Comptroller of the Currency and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into con-

sideration. Any such regulation shall be issued in accordance with section 553 of title 5, United States Code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no savings association may engage in the activity directly.

(B) **AUTHORITY OF COMPTROLLER OF THE CURRENCY.**—This section does not limit the authority of the Comptroller of the Currency to issue regulations to promote safety and soundness, or to enforce compliance as to Federal savings associations with other applicable laws.

(C) **ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.**—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Deposit Insurance Fund.

(4) **“SUBSIDIARY” DEFINED.**—As used in this subsection, the term “subsidiary” does not include an insured depository institution.

(5) **APPLICABILITY TO CERTAIN SAVINGS BANKS.**—Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) **CALCULATION OF CAPITAL.**—No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 5(t) of the Home Owners’ Loan Act.

(o) **REAL ESTATE LENDING.**—

(1) **UNIFORM REGULATIONS.**—Not more than 9 months after the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

(A) secured by liens on interests in real estate; or

(B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) **STANDARDS.**—

(A) **CRITERIA.**—In prescribing standards under paragraph (1), the agencies shall consider—

(i) the risk posed to the Deposit Insurance Fund by such extensions of credit;

(ii) the need for safe and sound operation of insured depository institutions; and

(iii) the availability of credit.

(B) VARIATIONS PERMITTED.—In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

- (i) as may be required by Federal statute;
- (ii) as may be warranted, based on the risk to the Deposit Insurance Fund; or
- (iii) as may be warranted, based on the safety and soundness of the institutions.

(3) LOAN EVALUATION STANDARD.—No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

(4) EFFECTIVE DATE.—The regulations adopted under paragraph (1) shall become effective not later than 15 months after the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) PERIODIC REVIEW OF CAPITAL STANDARDS.—Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the Deposit Insurance Fund, consistent with section 38.

(q) SOVEREIGN RISK.—Section 25C of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(r) SUBSIDIARY DEPOSITORY INSTITUTIONS AS AGENTS FOR CERTAIN AFFILIATES.—

(1) IN GENERAL.—Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) BANK ACTING AS AGENT IS NOT A BRANCH.—Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) PROHIBITIONS ON ACTIVITIES.—A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) EXISTING AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting—

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) AGENCY RELATIONSHIP REQUIRED TO BE CONSISTENT WITH SAFE AND SOUND BANKING PRACTICES.—An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) AFFILIATED INSURED SAVINGS ASSOCIATIONS.—An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

(A) any State in which—

(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which—

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 44(a)(2); and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) PROHIBITION ON CERTAIN AFFILIATIONS.—

(1) IN GENERAL.—No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) EXCEPTION FOR MEMBERS OF A FEDERAL HOME LOAN BANK.—Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) ROUTINE BUSINESS FINANCING.—Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) STUDENT LOANS.—

(A) IN GENERAL.—This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—

(i) the reorganization of such Association in accordance with section 440 of the Higher Education Act of 1965, as amended, will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: *Provided*, That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the "dissolution date" (as that term is defined in section 440 of the Higher Education Act of 1965, as amended) has occurred, such depository institution will not use the trade name or service mark "Sallie Mae" in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the "Sallie Mae" name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) TERMS AND CONDITIONS.—In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) ADDITIONAL LIMITATIONS.—In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association's "investment portfolio" shall not at any time exceed the lesser of—

(i) the value of such portfolio on the date of the enactment of this subsection; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term "investment portfolio" shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 439(d) of the Higher Education Act of 1965, as such section existed on the day before the date of the repeal of such section;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) ENFORCEMENT.—The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 440 of the Higher Education Act of 1965.

(E) DEFINITIONS.—For purposes of this paragraph, the following definition shall apply—

(i) ASSOCIATION; HOLDING COMPANY.—Notwithstanding any provision in section 3, the terms “Association” and “Holding Company” have the same meanings as in section 440(i) of the Higher Education Act of 1965.

(ii) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(5) GOVERNMENT-SPONSORED ENTERPRISE DEFINED.—For purposes of this subsection, the term “Government-sponsored enterprise” has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(t) RECORDKEEPING REQUIREMENTS.—

(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) AVAILABILITY TO COMMISSION; CONFIDENTIALITY.—Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) DEFINITION.—As used in this subsection the term “Commission” means the Securities and Exchange Commission.

(u) LIMITATION ON CLAIMS.—

(1) IN GENERAL.—No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution trans-

ferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital; and

(B) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

(2) DEFINITION OF CLAIM.—For purposes of paragraph (1), the term “claim”—

(A) means a cause of action based on Federal or State law that—

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) LOANS BY INSURED INSTITUTIONS ON THEIR OWN STOCK.—

(1) GENERAL PROHIBITION.—No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) EXCLUSION.—For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(w) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

(1) AUTHORITY TO DISCLOSE INFORMATION.—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

(2) INFORMATION NOT REQUIRED.—Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

(3) MALICIOUS INTENT.—Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution, under this subsection concerning potentially unlawful activity that is made with malicious intent,

shall not be shielded from liability from the person identified in the disclosure.

(4) DEFINITION.—For purposes of this subsection, the term “insured depository institution” includes any uninsured branch or agency of a foreign bank.

(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Bureau, agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

(y) STATE LENDING LIMIT TREATMENT OF DERIVATIVES TRANSACTIONS.—An insured State bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. 84(b)(3)), only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.

(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act), unless—

(A) the transaction is on market terms; and

(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.

(aa) TREATMENT OF CERTAIN MUNICIPAL OBLIGATIONS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “investment grade”, with respect to an obligation, has the meaning given the term in section 1.2 of title 12, Code of Federal Regulations, or any successor thereto;

(B) the term “liquid and readily-marketable” has the meaning given the term in section 249.3 of title 12, Code of Federal Regulations, or any successor thereto; and

(C) the term “municipal obligation” means an obligation of—

(i) a State or any political subdivision thereof; or

(ii) any agency or instrumentality of a State or any political subdivision thereof.

(2) MUNICIPAL OBLIGATIONS.—For purposes of the final rule entitled “Liquidity Coverage Ratio: Liquidity Risk Measurement Standards” (79 Fed. Reg. 61439 (October 10, 2014)), the final rule entitled “Liquidity Coverage Ratio: Treatment of U.S. Municipal Securities as High-Quality Liquid Assets” (81 Fed. Reg. 21223 (April 11, 2016)), and any other regulation that incorporates a definition of the term “high-quality liquid asset” or another substantially similar term, the appropriate Federal banking agencies shall treat a municipal obligation as a high-quality liquid asset that is a level 2B liquid asset if that obligation is, as of the date of calculation—

(A) liquid and readily-marketable; and

(B) investment grade.

* * * * *

SEC. 43. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) PROVIDING COPIES OF AUDIT REPORT.—

(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed;

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed; and

(iii) in the case of depository institutions described in subsection (e)(2)(A) the deposits of which are insured by the private insurer which are members of a Federal home loan bank, to the Federal Housing Finance Agency, not later than 7 days after the audit is completed.

(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate, a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

(2) ADVERTISING; PREMISES.—

(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) ACKNOWLEDGMENT OF DISCLOSURE.—

(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2006, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2006 for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) ALTERNATIVE PROVISION OF NOTICE TO NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

(i) IN GENERAL.—Transmit to each depositor who was a depositor before the effective date of the Financial Services Regulatory Relief Act of 2006, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) MANNER AND TIMING OF NOTICE.—

(I) FIRST NOTICE.—Make the transmission described in clause (i) via mail not later than three months after the effective date of the Financial Services Regulatory Relief Act of 2006.

(II) SECOND NOTICE.—Make a second transmission described in clause (i) via mail not less

than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) **MANNER AND CONTENT OF DISCLOSURE.**—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Bureau, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) **EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.**—The Bureau may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

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

(1) **APPROPRIATE SUPERVISOR.**—The “appropriate supervisor” of a depository institution means the agency primarily responsible for supervising the institution.

(2) **DEPOSITORY INSTITUTION.**—The term “depository institution” includes—

(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

(B) any entity that, as determined by the Bureau—

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity’s current or prospective customers.

(3) **LACKING FEDERAL DEPOSIT INSURANCE.**—A depository institution lacks Federal deposit insurance if the institution is not either—

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

(4) **PRIVATE DEPOSIT INSURER.**—The term “private deposit insurer” means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(5) **BUREAU.**—The term “Bureau” means the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*.

(f) **ENFORCEMENT.**—

(1) **LIMITED ENFORCEMENT AUTHORITY.**—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commis-

sion Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.

(2) BROAD STATE ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

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TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

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SEC. 1011. ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE.

There shall be within the Council a subcommittee to be known as the “Appraisal Subcommittee”, which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies, the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, and the Federal Housing Finance Agency. Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession. At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.

TITLE XI—RIGHT TO FINANCIAL PRIVACY

* * * * *

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) “financial institution”, except as provided in section 1114, means any office of a bank, savings bank, card issuer as de-

defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) “financial record” means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer’s relationship with the financial institution;

(3) “Government authority” means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) “person” means an individual or a partnership of five or fewer individuals;

(5) “customer” means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person’s name;

(6) “holding company” means—

(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956); and

(B) any company described in section 4(f)(1) of the Bank Holding Company Act of 1956;

(7) “supervisory agency” means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

(B) the **■**Bureau of Consumer Financial Protection**■** *Consumer Financial Protection Bureau*;

(C) the National Credit Union Administration;

(D) the Board of Governors of the Federal Reserve System;

(E) the Comptroller of the Currency;

(F) the Securities and Exchange Commission;

(G) the Commodity Futures Trading Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91–508, title I and II);

or

(I) any State banking or securities department or agency; and

(8) “law enforcement inquiry” means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

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USE OF INFORMATION

SEC. 1112. (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency or department.

(b) When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of have been furnished to pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(c) Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109 (a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109 (a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 1109 (a) and (b) shall serve to the customer the notice specified in section 1109 (b).

(d) Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Notwithstanding section 1101(6) or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, the Federal Trade Commission, the Commodity Futures Trading Commission, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* is permitted.

(f) TRANSFER TO ATTORNEY GENERAL.—

(1) IN GENERAL.—Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney Gen-

eral or the Secretary of the Treasury upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) LIMITATION ON USE.—Records so transferred shall be used only for criminal investigative or prosecutive purposes, for civil actions under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or for forfeiture under sections 981 or 982 of title 18, United States Code, by the Department of Justice and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department. No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.

EXCEPTIONS

SEC. 1113. (a) Nothing in this title prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) This chapter shall not apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, subsidiary of a financial institution or holding company, institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a financial institution, holding company, or subsidiary, or other person participating in the conduct of the affairs thereof.

(c) Nothing in this title prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code.

(d) Nothing in this title shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Nothing in this title shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Nothing in this title shall apply when financial records are sought by a Government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the customer are parties.

(g) The notice requirements of this title and sections 1110 and 1112 shall not apply when a Government authority by a means described in section 1102 and for a legitimate law enforcement in-

quiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c)).

(h)(1) Nothing in this title (except sections 1103, 1117 and 1118) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer) or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 1103(b). For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this title, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer), or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over the violation, and such agency or department may then seek access to the records pursuant to the provisions of this title.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Nothing in this title (except sections 1115 and 1120) shall apply to any subpoena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409).

(j) This title shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k) DISCLOSURE NECESSARY FOR PROPER ADMINISTRATION OF PROGRAMS OF CERTAIN GOVERNMENT AUTHORITIES.—(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of the Internal Revenue Code of 1954, title II of the Social Security Act, or the Railroad Retirement Act of 1974.

(2) Nothing in this title shall apply to the disclosure by the financial institution of information contained in the financial records of any customer to any Government authority that certifies, disburses, or collects payments, where the disclosure of such information is necessary to, and such information is used solely for the purpose of—

(A) verification of the identity of any person or proper routing and delivery of funds in connection with the issuance of a Federal payment or collection of funds by a Government authority; or

(B) the investigation or recovery of an improper Federal payment or collection of funds or an improperly negotiated Treasury check.

(3) Notwithstanding any other provision of law, a request authorized by paragraph (1) or (2) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing information contained in the financial records of the customer to the Government authority requesting the information, and the financial institution and its agents shall be barred from redisclosure of such information. Any Government authority receiving information pursu-

ant to paragraph (1) or (2) may not disclose or use the information, except for the purposes set forth in such paragraph.

(1) **CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS.**—Nothing in this title shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or

(2) any provision of subchapter II of chapter 53 of title 31, United States Code or of section 1956 or 1957 of title 18, United States Code.

No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.

(m) This title shall not apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information in the exercise of the Federal Reserve System's authority to extend credit to the financial institutions or others.

(n) This title shall not apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information in the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.

(o) This title shall not apply to the examination by or disclosure to the Federal Housing Finance Agency or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance Agency's authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.

(p)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of Veterans Affairs where the disclosure of such information is necessary to, and such information is used solely for the purposes of, the proper administration of benefits programs under laws administered by the Secretary.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of Veterans Affairs and shall be barred from redisclosure by the financial institution or its agents.

(q) Nothing in this title shall apply to the disclosure of any financial record or information to a Government authority in conjunction with a Federal contractor-issued travel charge card issued for official Government travel.

(r) DISCLOSURE TO THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*.—Nothing in this title shall apply to the examination by or disclosure to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* of financial records or information in the exercise of its authority with respect to a financial institution.

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FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

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TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

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SEC. 1112. FUNCTIONS OF THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES RELATING TO APPRAISER QUALIFICATIONS.

(a) IN GENERAL.—Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe, in accordance with sections 1113 and 1114 of this title, which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser under this title.

(b) THRESHOLD LEVEL.—Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions, and receives concurrence from the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

(c) GAO STUDY OF APPRAISALS IN CONNECTION WITH REAL ESTATE RELATED FINANCIAL TRANSACTIONS BELOW THE THRESHOLD LEVEL.—

(1) GAO STUDIES.—The Comptroller General of the United States may conduct, under such conditions as the Comptroller General determines appropriate, studies on the adequacy and quality of appraisals or evaluations conducted in connection with real estate related financial transactions below the threshold level established under subsection (b), taking into account—

(A) the cost to any financial institution involved in any such transaction;

- (B) the possibility of losses to the Deposit Insurance Fund or the National Credit Union Share Insurance Fund;
- (C) the cost to any customer involved in any such transaction; and
- (D) the effect on low-income housing.

(2) REPORTS TO CONGRESS AND THE APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—Upon completing each of the studies referred to in paragraph (1), the Comptroller General shall submit a report on the Comptroller General's findings and conclusions with respect to such study to the Federal financial institutions regulatory agencies, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such commendations for legislative or administrative action as the Comptroller General determines to be appropriate.

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SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements shall include a requirement that such companies—

- (1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;
- (2) verify that only licensed or certified appraisers are used for federally related transactions;
- (3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and
- (4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

(b) RELATION TO STATE LAW.—Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).

(c) FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.

(d) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly,

is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

(e) **REPORTING.**—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee.

(f) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.

(2) **EXTENSION OF EFFECTIVE DATE.**—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.

SEC. 1125. AUTOMATED VALUATION MODELS USED TO ESTIMATE COLLATERAL VALUE FOR MORTGAGE LENDING PURPOSES.

(a) **IN GENERAL.**—Automated valuation models shall adhere to quality control standards designed to—

- (1) ensure a high level of confidence in the estimates produced by automated valuation models;
- (2) protect against the manipulation of data;
- (3) seek to avoid conflicts of interest;
- (4) require random sample testing and reviews; and
- (5) account for any other such factor that the agencies listed in subsection (b) determine to be appropriate.

(b) **ADOPTION OF REGULATIONS.**—The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, shall promulgate regulations to implement the quality control standards required under this section.

(c) **ENFORCEMENT.**—Compliance with regulations issued under this subsection shall be enforced by—

(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

(2) with respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, and a State attorney general.

(d) **AUTOMATED VALUATION MODEL DEFINED.**—For purposes of this section, the term “automated valuation model” means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.

SEC. 1127. EXEMPTION FROM APPRAISALS OF REAL ESTATE LOCATED IN RURAL AREAS.

(a) **DEFINITIONS.**—In this section—

(1) the term “mortgage originator” has the meaning given the term in section 103 of the Truth in Lending Act (15 U.S.C. 1602); and

(2) the term “transaction value” means the amount of a loan or extension of credit, including a loan or extension of credit that is part of a pool of loans or extensions of credit.

(b) **APPRAISAL NOT REQUIRED.**—Except as provided in subsection (d), notwithstanding any other provision of law, an appraisal in connection with a federally related transaction involving real property or an interest in real property is not required if—

(1) the real property or interest in real property is located in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations;

(2) not later than 3 days after the date on which the Closing Disclosure Form, made in accordance with the final rule of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* entitled “Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)” (78 Fed. Reg. 79730 (December 31, 2013)), relating to the federally related transaction is given to the consumer, the mortgage originator or its agent, directly or indirectly—

(A) has contacted not fewer than 3 State certified appraisers or State licensed appraisers, as applicable, on the mortgage originator’s approved appraiser list in the market area in accordance with part 226 of title 12, Code of Federal Regulations; and

(B) has documented that no State certified appraiser or State licensed appraiser, as applicable, was available within 5 business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments, as documented by the mortgage originator or its agent;

(3) the transaction value is less than \$400,000; and

(4) the mortgage originator is subject to oversight by a Federal financial institutions regulatory agency.

(c) **SALE, ASSIGNMENT, OR TRANSFER.**—A mortgage originator that makes a loan without an appraisal under the terms of subsection (b) shall not sell, assign, or otherwise transfer legal title to the loan unless—

(1) the loan is sold, assigned, or otherwise transferred to another person by reason of the bankruptcy or failure of the mortgage originator;

(2) the loan is sold, assigned, or otherwise transferred to another person regulated by a Federal financial institutions regulatory agency, so long as the loan is retained in portfolio by the person;

(3) the sale, assignment, or transfer is pursuant to a merger of the mortgage originator with another person or the acquisition of the mortgage originator by another person or of another person by the mortgage originator; or

(4) the sale, loan, or transfer is to a wholly owned subsidiary of the mortgage originator, provided that, after the sale, assignment, or transfer, the loan is considered to be an asset of the mortgage originator for regulatory accounting purposes.

(d) **EXCEPTION.**—Subsection (b) shall not apply if—

(1) a Federal financial institutions regulatory agency requires an appraisal under section 225.63(c), 323.3(c), 34.43(c), or 722.3(e) of title 12, Code of Federal Regulations; or

(2) the loan is a high-cost mortgage, as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(e) **ANTI-EVASION.**—Each Federal financial institutions regulatory agency shall ensure that any mortgage originator that the Federal financial institutions regulatory agency oversees that makes a significant amount of loans under subsection (b) is complying with the requirements of subsection (b)(2) with respect to each loan.

TITLE XII—MISCELLANEOUS PROVISIONS

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SEC. 1206. COMPARABILITY IN COMPENSATION SCHEDULES.

(a) **IN GENERAL.**—The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Board, the Office of Financial Research, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* the Oversight Board of the Resolution Trust Corporation, the Farm Credit Administration, in establishing and adjusting schedules of compensation and benefits which are to be determined solely by each agency under applicable provisions of law, shall inform the heads of the other agencies and the Congress of such compensation and benefits and shall seek to maintain comparability regarding compensation and benefits.

(b) **COMMODITY FUTURES TRADING COMMISSION.**—In establishing and adjusting schedules of compensation and benefits for employees of the Commodity Futures Trading Commission under applicable provisions of law, the Commission shall—

(1) inform the heads of the agencies referred to in subsection (a) and Congress of such compensation and benefits; and

(2) seek to maintain comparability with those agencies regarding compensation and benefits.

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FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT

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TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

SEC. 511. SHORT TITLE.

This title may be cited as the “Financial Literacy and Education Improvement Act”.

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SEC. 513. ESTABLISHMENT OF FINANCIAL LITERACY AND EDUCATION COMMISSION.

(a) **IN GENERAL.**—There is established a commission to be known as the “Financial Literacy and Education Commission”.

(b) **PURPOSE.**—The Commission shall serve to improve the financial literacy and education of persons in the United States through development of a national strategy to promote financial literacy and education.

(c) **MEMBERSHIP.**—

(1) **COMPOSITION.**—The Commission shall be composed of—

(A) the Secretary of the Treasury;

(B) the respective head of each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management;

(C) the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*; and

(D) at the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Federal Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

(2) **ALTERNATES.**—Each member of the Commission may designate an alternate if the member is unable to attend a meeting of the Commission. Such alternate shall be an individual who exercises significant decisionmaking authority.

(d) **CHAIRPERSON.**—The Secretary of the Treasury shall serve as the Chairperson. The Director of the [Bureau of Consumer Finan-

cial Protection] *Consumer Financial Protection Bureau* shall serve as the Vice Chairman.

(e) MEETINGS.—The Commission shall hold, at the call of the Chairperson, at least 1 meeting every 4 months. All such meetings shall be open to the public. The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this title.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) INITIAL MEETING.—The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

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SECTION 626 OF THE FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2009

SEC. 626. (a)(1) The [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(2) The [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.

(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1), in the same manner, by the same means, and with the same jurisdiction, as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.

(b)

(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

- (C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or
- (D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.
- (2) The State shall serve written notice to the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* or the Commission, as appropriate of any civil action under paragraph (1) at least 60 days prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.
- (3) Upon receiving the notice required by paragraph (2) and subject to subtitle B of the Consumer Financial Protection Act of 2010 the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* or the Commission, as appropriate may intervene in such civil action and upon intervening—
- (A) be heard on all matters arising in such civil action;
- (B) remove the action to the appropriate United States district court; and
- (C) file petitions for appeal of a decision in such civil action.
- (4) Nothing in this subsection shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. Nothing in this section shall prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.
- (5) In a civil action brought under paragraph (1)—
- (A) the venue shall be a judicial district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code; and
- (B) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted.
- (6) Whenever a civil action or an administrative action has been instituted by or on behalf of the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* or the Commission for violation of any provision of law or rule described in paragraph (1), no State may, during the pendency of such action instituted by or on behalf of the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* or the Commission, institute a civil action under that paragraph against any defendant named in the complaint in such action for violation of any law or rule as alleged in such complaint.
- (7) If the attorney general of a State prevails in any civil action under paragraph (1), the State can recover reasonable costs and attorney fees from the lender or related party.
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GRAMM-LEACH-BLILEY ACT**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Gramm-Leach-Bliley Act”.

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TITLE V—PRIVACY**Subtitle A—Disclosure of Nonpublic Personal Information****SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFORMATION.**

(a) **PRIVACY OBLIGATION POLICY.**—It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers’ nonpublic personal information.

(b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In furtherance of the policy in subsection (a), each agency or authority described in section 505(a), other than the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION.

(a) **NOTICE REQUIREMENTS.**—Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503.

(b) **OPT OUT.**—

(1) **IN GENERAL.**—A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) EXCEPTION.—This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) LIMITS ON REUSE OF INFORMATION.—Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) LIMITATIONS ON THE SHARING OF ACCOUNT NUMBER INFORMATION FOR MARKETING PURPOSES.—A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) GENERAL EXCEPTIONS.—Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

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SEC. 504. RULEMAKING.

(a) REGULATORY AUTHORITY.—

(1) RULEMAKING.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to their respective jurisdiction under section 505 (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* shall not have authority to prescribe regulations with respect to the standards under section 501.

(B) CFTC.—The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 5g of the Commodity Exchange Act.

(C) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding the authority of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010.

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subtitle.

(2) COORDINATION, CONSISTENCY, AND COMPARABILITY.—Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) PROCEDURES AND DEADLINE.—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code.

(b) AUTHORITY TO GRANT EXCEPTIONS.—The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 502 as are deemed consistent with the purposes of this subtitle.

SEC. 505. ENFORCEMENT.

(a) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act, by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940, by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940, by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of this Act.

(7) Under the Federal Trade Commission Act, by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010, by the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subtitle, but not with respect to the standards under section 501.

(b) ENFORCEMENT OF SECTION 501.—

(1) IN GENERAL.—Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, shall implement the standards prescribed under section 501(b) in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the Federal Deposit Insurance Act are implemented pursuant to such section.

(2) EXCEPTION.—The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 501(b) by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) ABSENCE OF STATE ACTION.—If a State insurance authority fails to adopt regulations to carry out this subtitle, such State shall

not be eligible to override, pursuant to section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a Federal banking agency under section 47(a) of such Act.

(d) DEFINITIONS.—The terms used in subsection (a)(1) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the same meaning as given in section 1(b) of the International Banking Act of 1978.

* * * * *

SEC. 507. RELATION TO STATE LAWS.

(a) IN GENERAL.—This subtitle and the amendments made by this subtitle shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle and the amendments made by this subtitle, as determined by the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

SHORT TITLE

SEC. 301. This title may be cited as the “Home Mortgage Disclosure Act of 1975”.

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DEFINITIONS

SEC. 303. For purposes of this title—

(1) the term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*;

(2) the term “mortgage loan” means a loan which is secured by residential real property or a home improvement loan;

(3) the term “depository institution”—

(A) means—

(i) any bank (as defined in section 3(a)(1) of the Federal Deposit Insurance Act);

(ii) any savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act); and

(iii) any credit union, which makes federally related mortgage loans as determined by the Board; and

(B) includes any other lending institution (as defined in paragraph (4)) other than any institution described in subparagraph (A);

(4) the term “completed application” means an application in which the creditor has received the information that is regularly obtained in evaluating applications for the amount and type of credit requested;

(5) the term “other lending institutions” means any person engaged for profit in the business of mortgage lending;

(6) the term “Board” means the Board of Governors of the Federal Reserve System; and

(7) the term “Secretary” means the Secretary of Housing and Urban Development.

* * * * *

ENFORCEMENT

SEC. 305. (a) The Bureau shall prescribe such regulations as may be necessary to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary and proper to effectuate the purposes of this title, and prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) POWERS OF CERTAIN OTHER AGENCIES.—

(1) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced—

(A) under section 8 of the Federal Deposit Insurance Act, the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(i) any national bank or Federal savings association, and any Federal branch or Federal agency of a foreign bank;

(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

(iii) any bank or State savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C);

(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle;

(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) OVERALL ENFORCEMENT AUTHORITY OF THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). To facilitate research, examinations, and enforcement, all data collected pursuant to section 304 shall be available to the entities listed under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this title.

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SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

(a) IN GENERAL.—

(1) CONSULTATION REQUIRED.—The Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

(3) CONTRACTING AUTHORITY.—The Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

(b) RECOMMENDATIONS TO CONGRESS.—The Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall recommend to the Committee on Banking,

Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* deems appropriate to carry out the purpose of this title.

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HOMEOWNERS PROTECTION ACT OF 1998

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SEC. 10. ENFORCEMENT.

(a) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

(2) the Federal Credit Union Act, by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act;

(3) part C of title V of the Farm Credit Act of 1971 (12 U.S.C. 2261 et seq.), by the Farm Credit Administration in the case of an institution that is a member of the Farm Credit System; and

(4) subtitle E of the Consumer Financial Protection Act of 2010, by the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, with respect to any person subject to this Act.

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS ACT TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this Act, any other authority conferred on such agency by law.

(c) ENFORCEMENT AND REIMBURSEMENT.—In carrying out its enforcement activities under this section, each agency referred to in subsection (a) shall—

(1) notify the mortgagee or servicer of any failure of the mortgagee or servicer to comply with 1 or more provisions of this Act;

(2) with respect to each such failure to comply, require the mortgagee or servicer, as applicable, to correct the account of the mortgagor to reflect the date on which the mortgage insurance should have been canceled or terminated under this Act; and

(3) require the mortgagee or servicer, as applicable, to reimburse the mortgagor in an amount equal to the total unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased under this Act.

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INSPECTOR GENERAL ACT OF 1978

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Inspector General Act of 1978".

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REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 12 of this Act, as used in this section—

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 12(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, the Board for International Broadcasting, the Committee for Purchase From People Who Are Blind or Severely Disabled, the

Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Defense Intelligence Agency, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Geospatial-Intelligence Agency, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Development Finance Corporation, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

(3) the term “head of the Federal entity” means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term “head of the designated Federal entity” means the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission, any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board;

(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);

(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

(D) with respect to the Committee for Purchase From People Who Are Blind or Severely Disabled, such term means the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled;

(E) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

(F) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

(G) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

(H) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities;

(I) with respect to the Peace Corps, such term means the Director of the Peace Corps; and

(J) with respect to the United States International Development Finance Corporation, such term means the Board of Directors of the United States International Development Finance Corporation;

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*. The Inspector General of the Board of Governors of the Federal Reserve System and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall have all of the authorities and responsibilities provided by this Act with respect to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, as if the Bureau were part of the Board of Governors of the Federal Reserve System.

(d)(1) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. Except as provided in paragraph (2), the head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation, or from accessing information available to an element of

the intelligence community specified in subparagraph (D),, or from accessing information available to an element of the intelligence community specified in subparagraph (D), if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

(D) The elements of the intelligence community specified in this subparagraph are as follows:

- (i) The Defense Intelligence Agency.
- (ii) The National Geospatial-Intelligence Agency.
- (iii) The National Reconnaissance Office.
- (iv) The National Security Agency.

(E) The committees of Congress specified in this subparagraph are—

- (i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and
- (ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e)(1) In the case of a designated Federal entity for which a board, chairman of a committee, or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a $\frac{2}{3}$ majority of the board, committee, or commission.”

(2) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied.

(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the “Inspector General”) shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

(3)(A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

- (I) ongoing civil or criminal investigations or proceedings;
- (II) undercover operations;
- (III) the identity of confidential sources, including protected witnesses;
- (IV) intelligence or counterintelligence matters; or
- (V) other matters the disclosure of which would constitute a serious threat to national security.

(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General—

- (i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and
- (ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(4) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

(5) As used in this subsection, the term “Governors” has the meaning given such term by section 102(3) of title 39, United States Code.

(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) “designated Federal entity” for “establishment”; and

(B) “head of the designated Federal entity” for “head of the establishment”.

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(4) Each Inspector General shall—

(A) in accordance with applicable laws and regulations governing appointments within the designated Federal entity, appoint a Counsel to the Inspector General who shall report to the Inspector General;

(B) obtain the services of a counsel appointed by and directly reporting to another Inspector General on a reimbursable basis; or

(C) obtain the services of appropriate staff of the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and if the designated Federal entity is not a board or commission, include the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

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INTERSTATE LAND SALES FULL DISCLOSURE ACT

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TITLE XIV—INTERSTATE LAND SALES

* * * * *

DEFINITIONS

SEC. 1402. For the purposes of this title, the term—

(1) “Director” means the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*;

(2) “person” means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) “subdivision” means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan;

(4) “common promotional plan” means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

(5) “developer” means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(6) “agent” means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation or another person consists solely of rendering legal services;

(7) “blanket encumbrance” means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an op-

tion or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

(8) "interstate commerce" means trade or commerce among the several states or between any foreign country and any state;

(9) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(10) "purchaser" means an actual or prospective purchaser or lessee of any lot in a subdivision;

(11) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision; and

(12) "Bureau" means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

* * * * *

ADMINISTRATION

SEC. 1416. (a) The authority and responsibility for administering this title shall be in the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* who may delegate any of his functions, duties, and powers to employees of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* or to boards of such employees including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Bureau in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. The Director shall by rule prescribed such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Bureau, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(b) All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with provisions of subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

(c) The Director shall conduct all actions with respect to rule-making or adjudication under this title in accordance with the provisions of chapter 5 of title 5, United States Code. Notice shall be given of any adverse action or final disposition and such notice and the entry of any order shall be accompanied by a written statement of supporting facts and legal authority.

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REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

SHORT TITLE

SECTION 1. This Act may be cited as the “Real Estate Settlement Procedures Act of 1974”.

* * * * *

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term “federally related mortgage loan” includes any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any “creditor”, as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year, except that for the purpose of this Act, the term “creditor” does not include any agency or instrumentality of any state;

(2) the term “thing of value” includes any payment, advance, funds, loan, service, or other consideration;

(3) the term “settlement services” includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searchers, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (in-

cluding, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;

(4) the term “title company” means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term “person” includes individuals, corporations, associations, partnerships, and trusts;

(6) the term “Secretary” means the Secretary of Housing and Urban Development;

(7) the term “affiliated business arrangement” means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmately influences the selection of that provider;

(8) the term “associate” means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business; and

(9) the term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

* * * * *

HOME BUYING INFORMATION BOOKLETS

SEC. 5. (a) PREPARATION AND DISTRIBUTION.—The Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* (hereafter in this section referred to as the “Director”) shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

(b) CONTENTS.—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other informa-

tion as the Director may provide, shall include in plain and understandable language the following information:

(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

- (A) balloon payments;
- (B) prepayment penalties;
- (C) the advantages of prepayment; and
- (D) the trade-off between closing costs and the interest rate over the life of the loan.

(2) An explanation and sample of the uniform settlement statement required by section 4.

(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled “Consumer Handbook on Adjustable Rate Mortgages”, published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

(11) An explanation of a consumer’s responsibilities, liabilities, and obligations in a mortgage transaction.

(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

(13) Notice that the Office of Housing of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

(14) An explanation of flood insurance and the availability of flood insurance under the National Flood Insurance Program or from a private insurance company, whether or not the real estate is located in an area having special flood hazards, and the following statement: “Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure.”.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau. Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.

(d) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. The lender shall provide the booklet in the version that is most appropriate for the person receiving it. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Booklets may be printed and distributed by lenders if their form and content are approved by the Bureau as meeting the requirements of subsection (b) of this section.

SERVICING OF MORTGAGE LOANS AND ADMINISTRATION OF ESCROW ACCOUNTS

SEC. 6. (a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) NOTICE BY TRANSFEROR OR LOAN SERVICING AT TIME OF TRANSFER.—

(1) NOTICE REQUIREMENT.—Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) TIME OF NOTICE.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) EXCEPTION FOR CERTAIN PROCEEDINGS.—The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) EXCEPTION FOR NOTICE PROVIDED AT CLOSING.—The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) CONTENTS OF NOTICE.—The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan

and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) NOTICE BY TRANSFEREE OF LOAN SERVICING AT TIME OF TRANSFER.—

(1) NOTICE REQUIREMENT.—Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) TIME OF NOTICE.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) EXCEPTION FOR CERTAIN PROCEEDINGS.—The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) EXCEPTION FOR NOTICE PROVIDED AT CLOSING.—The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) CONTENTS OF NOTICE.—Any notice required under paragraph (1) shall include the information described in subsection (b)(3).

(d) TREATMENT OF LOAN PAYMENTS DURING TRANSFER PERIOD.—During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor

servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) DUTY OF LOAN SERVICER TO RESPOND TO BORROWER INQUIRIES.—

(1) NOTICE OF RECEIPT OF INQUIRY.—

(A) IN GENERAL.—If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) QUALIFIED WRITTEN REQUEST.—For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) ACTION WITH RESPECT TO INQUIRY.—Not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) PROTECTION OF CREDIT RATING.—During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 603 of the Fair Credit Reporting Act).

(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

(f) DAMAGES AND COSTS.—Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) INDIVIDUALS.—In the case of any action by an individual, an amount equal to the sum of—

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

(2) CLASS ACTIONS.—In the case of a class action, an amount equal to the sum of—

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—

(i) \$1,000,000; or

(ii) 1 percent of the net worth of the servicer.

(3) COSTS.—In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) NONLIABILITY.—A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) ADMINISTRATION OF ESCROW ACCOUNTS.—If the terms of any federally related mortgage loan require the borrower to make pay-

ments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due. Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.

(h) **PREEMPTION OF CONFLICTING STATE LAWS.**—Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

(i) **DEFINITIONS.**—For purposes of this section:

(1) **EFFECTIVE DATE OF TRANSFER.**—The term “effective date of transfer” means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) **SERVICER.**—The term “servicer” means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include—

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) **SERVICING.**—The term “servicing” means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 10, and making the payments of principal and interest and such other payments with respect to the

amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) TRANSITION.—

(1) ORIGINATOR LIABILITY.—A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) SERVICER LIABILITY.—A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

(3) REGULATIONS AND EFFECTIVE DATE.—The Bureau shall establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

(k) SERVICER PROHIBITIONS.—

(1) IN GENERAL.—A servicer of a federally related mortgage shall not—

(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

(B) charge fees for responding to valid qualified written requests (as defined in regulations which the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall prescribe) under this section;

(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

(E) fail to comply with any other obligation found by the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

(2) FORCE-PLACED INSURANCE DEFINED.—For purposes of this subsection and subsections (l) and (m), the term "force-placed insurance" means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

(l) REQUIREMENTS FOR FORCE-PLACED INSURANCE.—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

(1) WRITTEN NOTICES TO BORROWER.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

(i) a reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;

(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

(iv) a statement that the servicer may obtain such coverage at the borrower’s expense if the borrower does not provide such demonstration of the borrower’s existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(2) SUFFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*.

(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of confirmation of a borrower’s existing insurance coverage, the servicer shall—

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower’s insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer’s account with respect to the force-placed insurance during such period.

(4) CLARIFICATION WITH RESPECT TO FLOOD DISASTER PROTECTION ACT.—No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.

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TITLE LXII OF THE REVISED STATUTES OF THE UNITED STATES

TITLE LXII

NATIONAL BANKS.

CHAPTER ONE—ORGANIZATION AND POWERS.

* * * * *

SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

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

(1) **NATIONAL BANK.**—The term “national bank” includes—

(A) any bank organized under the laws of the United States; and

(B) any Federal branch established in accordance with the International Banking Act of 1978.

(2) **STATE CONSUMER FINANCIAL LAWS.**—The term “State consumer financial law” means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

(3) **OTHER DEFINITIONS.**—The terms “affiliate”, “subsidiary”, “includes”, and “including” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(b) **PREEMPTION STANDARD.**—

(1) **IN GENERAL.**—State consumer financial laws are preempted, only if—

(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

(2) **SAVINGS CLAUSE.**—This title and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

(3) **CASE-BY-CASE BASIS.**—

(A) DEFINITION.—As used in this section the term “case-by-case basis” refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* and shall take the views of the Bureau into account when making the determination.

(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

(5) STANDARDS OF REVIEW.—

(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996).

(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and in-

specting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title or section 24 of Federal Reserve Act (12 U.S.C. 371), a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of “interest” under such provision.

(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

(h) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

(1) DEFINITIONS.—For purposes of this subsection, the terms “depository institution”, “subsidiary”, and “affiliate” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) RULE OF CONSTRUCTION.—No provision of this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).

(i) VISITORIAL POWERS.—

(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in *Cuomo v. Clearing House Assn.*, L. L. C. (129 S. Ct. 2710 (2009)), no provision of this

title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

(j) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.

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RIGHT TO FINANCIAL PRIVACY ACT OF 1978

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TITLE XI—RIGHT TO FINANCIAL PRIVACY

SEC. 1100. This title may be cited as the “Right to Financial Privacy Act of 1978”.

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) “financial institution”, except as provided in section 1114, means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) “financial record” means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer’s relationship with the financial institution;

(3) “Government authority” means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) “person” means an individual or a partnership of five or fewer individuals;

(5) “customer” means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person’s name;

(6) “holding company” means—

(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956); and

(B) any company described in section 4(f)(1) of the Bank Holding Company Act of 1956;

(7) “supervisory agency” means with respect to any particular financial institution, holding company, or any sub-

subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

- (A) the Federal Deposit Insurance Corporation;
 - (B) the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*;
 - (C) the National Credit Union Administration;
 - (D) the Board of Governors of the Federal Reserve System;
 - (E) the Comptroller of the Currency;
 - (F) the Securities and Exchange Commission;
 - (G) the Commodity Futures Trading Commission;
 - (H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II);
- or
- (I) any State banking or securities department or agency; and

(8) “law enforcement inquiry” means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

* * * * *

USE OF INFORMATION

SEC. 1112. (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency or department.

(b) When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: “Copies of, or information contained in, your financial records lawfully in possession of have been furnished to pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.”

(c) Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109 (a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109 (a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency

or department that obtained the court order authorizing a delay in notice pursuant to section 1109 (a) and (b) shall serve to the customer the notice specified in section 1109 (b).

(d) Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Notwithstanding section 1101(6) or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, the Federal Trade Commission, the Commodity Futures Trading Commission, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* is permitted.

(f) TRANSFER TO ATTORNEY GENERAL.—

(1) IN GENERAL.—Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General or the Secretary of the Treasury upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) LIMITATION ON USE.—Records so transferred shall be used only for criminal investigative or prosecutive purposes, for civil actions under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or for forfeiture under sections 981 or 982 of title 18, United States Code, by the Department of Justice and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department. No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.

EXCEPTIONS

SEC. 1113. (a) Nothing in this title prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) This chapter shall not apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to

any financial institution, holding company, subsidiary of a financial institution or holding company, institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a financial institution, holding company, or subsidiary, or other person participating in the conduct of the affairs thereof.

(c) Nothing in this title prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code.

(d) Nothing in this title shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Nothing in this title shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Nothing in this title shall apply when financial records are sought by a Government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the customer are parties.

(g) The notice requirements of this title and sections 1110 and 1112 shall not apply when a Government authority by a means described in section 1102 and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c)).

(h)(1) Nothing in this title (except sections 1103, 1117 and 1118) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer) or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 1103(b). For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this title, whenever a customer applies for participation in a Government loan, loan guaranty, or loan

insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer), or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over the violation, and such agency or department may then seek access to the records pursuant to the provisions of this title.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Nothing in this title (except sections 1115 and 1120) shall apply to any subpoena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409).

(j) This title shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k) DISCLOSURE NECESSARY FOR PROPER ADMINISTRATION OF PROGRAMS OF CERTAIN GOVERNMENT AUTHORITIES.—(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of,

the proper administration of section 1441 of the Internal Revenue Code of 1954, title II of the Social Security Act, or the Railroad Retirement Act of 1974.

(2) Nothing in this title shall apply to the disclosure by the financial institution of information contained in the financial records of any customer to any Government authority that certifies, disburses, or collects payments, where the disclosure of such information is necessary to, and such information is used solely for the purpose of—

(A) verification of the identity of any person or proper routing and delivery of funds in connection with the issuance of a Federal payment or collection of funds by a Government authority; or

(B) the investigation or recovery of an improper Federal payment or collection of funds or an improperly negotiated Treasury check.

(3) Notwithstanding any other provision of law, a request authorized by paragraph (1) or (2) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing information contained in the financial records of the customer to the Government authority requesting the information, and the financial institution and its agents shall be barred from redisclosure of such information. Any Government authority receiving information pursuant to paragraph (1) or (2) may not disclose or use the information, except for the purposes set forth in such paragraph.

(1) **CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS.**—Nothing in this title shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or

(2) any provision of subchapter II of chapter 53 of title 31, United States Code or of section 1956 or 1957 of title 18, United States Code.

No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.

(m) This title shall not apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information in the exercise of the Federal Reserve System's authority to extend credit to the financial institutions or others.

(n) This title shall not apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information in the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.

(o) This title shall not apply to the examination by or disclosure to the Federal Housing Finance Agency or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance Agency's authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.

(p)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of Veterans Affairs where the disclosure of such information is necessary to, and such information is used solely for the purposes of, the proper administration of benefits programs under laws administered by the Secretary.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of Veterans Affairs and shall be barred from redisclosure by the financial institution or its agents.

(q) Nothing in this title shall apply to the disclosure of any financial record or information to a Government authority in conjunction with a Federal contractor-issued travel charge card issued for official Government travel.

(r) DISCLOSURE TO THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*.—Nothing in this title shall apply to the examination by or disclosure to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* of financial records or information in the exercise of its authority with respect to a financial institution.

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S.A.F.E. MORTGAGE LICENSING ACT OF 2008

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DIVISION A—HOUSING FINANCE REFORM

* * * * *

TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

SEC. 1501. SHORT TITLE.

This title may be cited as the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”.

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SEC. 1503. DEFINITIONS.

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

(1) **BUREAU.**—The term “Bureau” means the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

(2) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(4) **LOAN ORIGINATOR.**—

(A) **IN GENERAL.**—The term “loan originator”—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) **OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.**—For purposes of this subsection, an individual “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) **ADMINISTRATIVE OR CLERICAL TASKS.**—The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing

or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(5) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term “loan processor or underwriter” means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(6) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Director under section 1509.

(7) NONTRADITIONAL MORTGAGE PRODUCT.—The term “non-traditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(8) REGISTERED LOAN ORIGINATOR.—The term “registered loan originator” means any individual who—

- (A) meets the definition of loan originator and is an employee of—
- (i) a depository institution;
 - (ii) a subsidiary that is—
 - (I) owned and controlled by a depository institution; and
 - (II) regulated by a Federal banking agency; or
 - (iii) an institution regulated by the Farm Credit Administration; and
- (B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.
- (9) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).
- (10) DIRECTOR.—The term “Director” means the Director of the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.
- (11) STATE.—The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.
- (12) STATE-LICENSED LOAN ORIGINATOR.—The term “State-licensed loan originator” means any individual who—
- (A) is a loan originator;
 - (B) is not an employee of—
 - (i) a depository institution;
 - (ii) a subsidiary that is—
 - (I) owned and controlled by a depository institution; and
 - (II) regulated by a Federal banking agency; or
 - (iii) an institution regulated by the Farm Credit Administration; and
 - (C) is licensed by a State or by the Director under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.
- (13) UNIQUE IDENTIFIER.—
- (A) IN GENERAL.—The term “unique identifier” means a number or other identifier that—
 - (i) permanently identifies a loan originator;
 - (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
 - (iii) shall not be used for purposes other than those set forth under this title.

(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States shall use unique identifiers in lieu of social security numbers.

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SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL AGENCIES.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010.

(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator under this subsection, the Bureau shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the identity of the employee, including—

(A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

(1) UNIQUE IDENTIFIER.—The Bureau, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Bureau, and the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) CONSIDERATION OF FACTORS AND PROCEDURES.—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Bureau shall make such de minimis exceptions as may

be appropriate to paragraphs (1)(A) and (2) of section 1504(a), shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this title.

SEC. 1508. [BUREAU OF CONSUMER FINANCIAL PROTECTION] CONSUMER FINANCIAL PROTECTION BUREAU BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.

(a) **BACKUP LICENSING SYSTEM.**—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the Director determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Director shall provide for the establishment and maintenance of a system for the licensing and registration by the Director of loan originators operating in such State as State-licensed loan originators.

(b) **LICENSING AND REGISTRATION REQUIREMENTS.**—The system established by the Director under subsection (a) for any State shall meet the requirements of sections 1505 and 1506 for State-licensed loan originators.

(c) **UNIQUE IDENTIFIER.**—The Director shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Director as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) **STATE LICENSING LAW REQUIREMENTS.**—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Director determines the law satisfies the following minimum requirements:

(1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

(5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for indi-

viduals acting as mortgage originators in their State without a valid license or registration.

(6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

(e) TEMPORARY EXTENSION OF PERIOD.—The Director may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 1505 and 1506 and subsection (d) if the Director determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(f) REGULATION AUTHORITY.—

(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.

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TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT

SECTION 1. SHORT TITLE.

This Act may be cited as the “Telemarketing and Consumer Fraud and Abuse Prevention Act”.

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SEC. 3. TELEMARKETING RULES.

(a) IN GENERAL.—

(1) The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

(2) The Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices which shall include fraudulent charitable solicitations, and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

(3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices—

(A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reason-

able consumer would consider coercive or abusive of such consumer's right to privacy,

(B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers,

(C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services; and

(D) a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.

In prescribing the rules described in this paragraph, the Commission shall also consider recordkeeping requirements.

(b) **RULEMAKING AUTHORITY.**—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau* regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the **[Bureau of Consumer Financial Protection]** *Consumer Financial Protection Bureau*.

(c) **VIOLATIONS.**—Any violation of any rule prescribed under subsection (a)—

(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.

(d) **SECURITIES AND EXCHANGE COMMISSION RULES.**—

(1) **PROMULGATION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by persons described in paragraph (2).

(B) EXCEPTION.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) APPLICATION.—

(A) IN GENERAL.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) the terms “broker”, “dealer”, “transfer agent”, “municipal securities dealer”, “municipal securities broker”, “government securities broker”, and “government securities dealer” have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5), (25), (30), (31), (43), and (44));

(ii) the term “investment adviser” has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); and

(iii) the term “investment company” has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)).

(e) COMMODITY FUTURES TRADING COMMISSION RULES.—

(1) APPLICATION.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).

(2) PROMULGATION.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:

“(f)(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this Act in connection with such person’s business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

“(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

“(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

“(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.”.

SEC. 4. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) or (f)(2) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney

general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—Whenever a civil action has been instituted by or on behalf of the Commission or the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by or on behalf of the Commission or the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, institute a civil action under subsection (a) or (f)(2) against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(e) VENUE; SERVICE OF PROCESS.—Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

SEC. 5. ACTIONS BY PRIVATE PERSONS.

(a) IN GENERAL.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of \$50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) ACTION BY THE COMMISSION.—Whenever a civil action has been instituted by or on behalf of the Commission or the [Bureau of Consumer Financial Protection] *Consumer Financial Protection*

Bureau for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by or on behalf of the Commission or the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, institute a civil action against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(d) COST AND FEES.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) CONSTRUCTION.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

(f) VENUE; SERVICE OF PROCESS.—Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

SEC. 6. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) EFFECT ON OTHER LAWS.—Nothing contained in this Act shall be construed to limit the authority of the Commission under any other provision of law.

(d) ENFORCEMENT BY [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau* under subtitle E of the Consumer Financial Protection Act of 2010, with respect to the offering or provision of a consumer financial product or service subject to that Act.

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TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

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§ 552a. Records maintained on individuals

(a) DEFINITIONS—For purposes of this section—

(1) the term “agency” means agency as defined in section 552(e) of this title;

(2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term “maintain” includes maintain, collect, use, or disseminate;

(4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term “matching program”—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

- (II) recouping payments or delinquent debts under such Federal benefit programs, or
 - (ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,
- (B) but does not include—
- (i) matches performed to produce aggregate statistical data without any personal identifiers;
 - (ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;
 - (iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;
 - (iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;
 - (v) matches—
 - (I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or
 - (II) conducted by an agency using only records from systems of records maintained by that agency;
 if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;
 - (vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;
 - (vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986;
 - (viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records; or

(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014;¹

(9) the term “recipient agency” means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term “non-Federal agency” means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term “source agency” means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term “Federal benefit program” means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term “Federal personnel” means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) CONDITIONS OF DISCLOSURE—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States

or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) ACCOUNTING OF CERTAIN DISCLOSURES—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the

individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any

person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place

of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) GENERAL EXEMPTIONS—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable in-

dividual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1)(1) ARCHIVAL RECORDS—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) GOVERNMENT CONTRACTORS—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) MAILING LISTS—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) MATCHING AGREEMENTS—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

- (i) such program will be conducted without any change; and
- (ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information;

or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) SANCTIONS—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a

system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has sub-

mitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

- (i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;
- (ii) there is adequate evidence that the matching agreement will be cost-effective; and
- (iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES—The Director of the Office of Management and Budget shall—

- (1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and
- (2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(w) APPLICABILITY TO [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER FINANCIAL PROTECTION BUREAU*—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*.

PART III—EMPLOYEES

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * *

Subchapter II—THE SENIOR EXECUTIVE SERVICE

* * * * *

SEC. 3132. DEFINITIONS AND EXCLUSIONS

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Central Intelligence Agency, the Office of the Director of National Intelligence, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10, and, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(C) the Federal Election Commission or the Election Assistance Commission;

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Resolution Trust Corporation, the Farm Credit Administration, the Federal Housing Finance Agency, the National Credit Union Administration, the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, and the Office of Financial Research;

(E) the Securities and Exchange Commission; or

(F) the Commodity Futures Trading Commission;

(2) “Senior Executive Service position” means any position in an agency which is classified above GS–15 pursuant to section 5108 or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

(A) directs the work of an organizational unit;

(B) is held accountable for the success of one or more specific programs or projects;

(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

(D) supervises the work of employees other than personal assistants; or

(E) otherwise exercises important policy-making, policy-determining, or other executive functions;

but does not include—

(i) any position in the Foreign Service of the United States;

(ii) an administrative law judge position under section 3105 of this title;

(iii) any position established as a qualified position in the excepted service by the Secretary of Homeland Secu-

rity under section 226 of the Homeland Security Act of 2002; or

(iv) any position established as a qualified position in the excepted service by the Secretary of Defense under section 1599f of title 10;

(3) “senior executive” means a member of the Senior Executive Service;

(4) “career appointee” means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) “limited term appointee” means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) “limited emergency appointee” means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

(7) “noncareer appointee” means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) “career reserved position” means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) “general position” means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public’s confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

- (1) review the application and stated reasons,
- (2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and
- (3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—

- (1) any agency is excluded under subsection (c) of this section, or
- (2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

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SECTION 987 OF TITLE 10, UNITED STATES CODE

§ 987. Terms of consumer credit extended to members and dependents: limitations

(a) INTEREST—A creditor who extends consumer credit to a covered member of the armed forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such credit, except as—

- (1) agreed to under the terms of the credit agreement or promissory note;
- (2) authorized by applicable State or Federal law; and
- (3) not specifically prohibited by this section.

(b) ANNUAL PERCENTAGE RATE—A creditor described in subsection (a) may not impose an annual percentage rate of interest

greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) MANDATORY LOAN DISCLOSURES—

(1) INFORMATION REQUIRED—With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) TERMS—Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) PREEMPTION—

(1) INCONSISTENT LAWS—Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) DIFFERENT TREATMENT UNDER STATE LAW OF MEMBERS AND DEPENDENTS PROHIBITED—States shall not—

(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for any consumer credit or loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections covering consumer credit for the benefit of residents of the State on the basis of nonresident or military status of a covered member or dependent of such a member, regardless of the member's or dependent's domicile or permanent home of record.

(e) LIMITATIONS—It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which—

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.);

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the borrower as a condition for legal action;

(5) the creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) PENALTIES AND REMEDIES—

(1) MISDEMEANOR—A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES—The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) CONTRACT VOID—Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) ARBITRATION—Notwithstanding section 2 of title 9, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(5) CIVIL LIABILITY—

(A) IN GENERAL—A person who violates this section with respect to any person is civilly liable to such person for—

- (i) any actual damage sustained as a result, but not less than \$500 for each violation;
- (ii) appropriate punitive damages;
- (iii) appropriate equitable or declaratory relief; and
- (iv) any other relief provided by law.

(B) COSTS OF THE ACTION—In any successful action to enforce the civil liability described in subparagraph (A), the person who violated this section is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(C) EFFECT OF FINDING OF BAD FAITH AND HARASSMENT—In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(D) DEFENSES—A person may not be held liable for civil liability under this paragraph if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error

include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(E) JURISDICTION, VENUE, AND STATUTE OF LIMITATIONS—An action for civil liability under this paragraph may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(i) two years after the date of discovery by the plaintiff of the violation that is the basis for such liability;

or

(ii) five years after the date on which the violation that is the basis for such liability occurs.

(6) ADMINISTRATIVE ENFORCEMENT—The provisions of this section (other than paragraph (1) of this subsection) shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

(g) SERVICEMEMBERS CIVIL RELIEF ACT PROTECTIONS UNAFFECTED—Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 3937).

(h) REGULATIONS—(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of “creditor” under paragraph (5) and “consumer credit” under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

(3) In prescribing regulations under this subsection, and not less often than once every two years thereafter, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau*.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) DEFINITIONS—In this section:

(1) COVERED MEMBER—The term “covered member” means a member of the armed forces who is—

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

(B) on active Guard and Reserve Duty.

(2) DEPENDENT—The term “dependent”, with respect to a covered member, means a person described in subparagraph (A), (D), (E), or (I) of section 1072(2) of this title.

(3) INTEREST—The term “interest” includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember’s dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) ANNUAL PERCENTAGE RATE—The term “annual percentage rate” has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(5) CREDITOR—The term “creditor” means a person—

(A) who—

(i) is engaged in the business of extending consumer credit; and

(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

(6) CONSUMER CREDIT—The term “consumer credit” has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

TITLE 44, UNITED STATES CODE

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

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SUBCHAPTER I—FEDERAL INFORMATION POLICY

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§ 3502. Definitions

As used in this subchapter—

(1) the term “agency” means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

(A) the Government Accountability Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

(2) the term “burden” means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

(A) reviewing instructions;

(B) acquiring, installing, and utilizing technology and systems;

(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(D) searching data sources;

(E) completing and reviewing the collection of information; and

(F) transmitting, or otherwise disclosing the information;

(3) the term “collection of information”—

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1);

(4) the term “Director” means the Director of the Office of Management and Budget;

(5) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission,

the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the [Bureau of Consumer Financial Protection] *Consumer Financial Protection Bureau*, the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(6) the term “information resources” means information and related resources, such as personnel, equipment, funds, and information technology;

(7) the term “information resources management” means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

(8) the term “information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(9) the term “information technology” has the meaning given that term in section 11101 of title 40 but does not include national security systems as defined in section 11103 of title 40;

(10) the term “person” means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(11) the term “practical utility” means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term “public information” means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

(13) the term “recordkeeping requirement” means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

(A) retain such records;

(B) notify third parties, the Federal Government, or the public of the existence of such records;

(C) disclose such records to third parties, the Federal Government, or the public; or

(D) report to third parties, the Federal Government, or the public regarding such records; and

(14) the term “penalty” includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

* * * * *

§ 3513. Director review of agency activities; reporting; agency response

(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National In-

stitute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

(1) be taken to address information resources management problems identified in the report; and

(2) improve agency performance and the accomplishment of agency missions.

(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the **【Bureau of Consumer Financial Protection】** *Consumer Financial Protection Bureau* on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.

* * * * *

MINORITY VIEWS

Committee Republicans view H.R. 1500, the *Consumers First Act*, to be an overt attempt by the Majority to codify their political agenda. The bill undermines the positive steps taken by the Consumer Financial Protection Bureau (CFPB) leadership to increase transparency and accountability in the agency's operations.

Perhaps overcome by a feeling of buyer's remorse, the Majority also takes issue with the unbridled power vested in the CFPB director. Ignoring the authority already vested in the Director of the CFPB, Democrats are attempting to codify its CFPB agenda with respect to staffing, limiting political appointees and directing policy initiatives through the creation of the Office of Students and Young Consumers and emphasizing the powers and duties of the Office of Fair Lending and Equal Opportunity. Rather than working with Committee Republicans to reform the agency and its authorities to avoid partisan policy shifts from director to director, the Majority is choosing to advance legislation that prescribes specific mandates to advance political priorities.

Committee Republicans have long fought for reform of the CFPB. Unfortunately, H.R. 1500 does nothing to address longstanding concerns articulated since the creation of the CFPB. As reflected in the base text of H.R. 1500 and in amendment debate, Democrats oppose legislative initiatives that would foster greater transparency and accountability at the CFPB. Despite their opposition to the current Director and the current agency agenda, the Democrats voted unanimously to maintain the CFPB's unchecked and limitless funding stream. Members of the Democratic majority unanimously opposed a measure to establish an Office of the Inspector General at the CFPB, and urged the withdrawal of an amendment that would have established a bipartisan CFPB commission. Another amendment would have substituted the inappropriate and politically-charged findings section with a requirement for the Government Accountability Office to conduct a study and report on the effectiveness of the CFPB in carrying out its statutory duties. Such amendments would have helped to promote sunlight at an otherwise opaque bureaucracy.

Since creation of the CFPB, Committee Republicans have fought against its rampant abuse of power, regulation through enforcement, and an unconstitutional structure governed by a single individual who is unaccountable. Committee Republicans support current efforts underway separate from H.R. 1500 to restructure the CFBP as a bipartisan Commission and urge Democrats to continue making the necessary reforms. Unfortunately, H.R. 1500 not only continues the status quo but exacerbates politicization of the agency.

SEAN P. DUFFY.
 LANCE GOODEN.
 DAVID KUSTOFF.
 ROGER WILLIAMS.
 ANN WAGNER,
Vice Ranking Member.
 JOHN W. ROSE.
 DENVER RIGGLEMAN.
 STEVE STIVERS.
 BLAINE LUETKEMEYER.
 ALEXANDER X. MOONEY.
 FRANK D. LUCAS.
 TED BUDD.
 BARRY LOUDERMILK.
 TOM EMMER.
 J. FRENCH HILL.
 WARREN DAVIDSON.
 ANTHONY GONZALEZ.
 TREY HOLLINGSWORTH.
 BILL HUIZENGA.
 ANDY BARR.
 LEE M. ZELDIN.
 BILL POSEY.
 PATRICK T. MCHENRY,
Ranking Member.
 SCOTT R. TIPTON.
 BRYAN STEIL.
 PETER T. KING.