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CONSUMER FINANCIAL PROTECTION AGENCY ACT OF 2009

DECEMBER 9, 2009.—Ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3126]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3126) to establish the Consumer Financial Protection Agency, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer Financial Protection Commission Act of 2009".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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

TITLE I—CONSUMER FINANCIAL PROTECTION COMMISSION

Sec. 1. Definitions.

Subtitle A—Establishment of the Commission

Sec. 111. Establishment of the Consumer Financial Protection Commission.
Sec. 112. Composition of the Commission.
Sec. 113. Consumer Financial Protection Oversight Board.
Sec. 114. Executive and administrative powers.
Sec. 115. Administration.
Sec. 116. Consumer Advisory Board.
Sec. 117. Coordination.
Sec. 118. Reports to the Congress.
Sec. 118A. GAO small business studies.
Sec. 119. Funding; fees and assessments; penalties and fines.
Sec. 120. Amendments relating to other administrative provisions.
Sec. 120A. Effective date.

Subtitle B—General Powers of the Commission

Sec. 121. Mandate and objectives.
Sec. 122. Authorities.
Sec. 123. Examination and enforcement for small banks, thrifts, and credit unions.
Sec. 124. Simultaneous and coordinated supervisory action.
Sec. 125. Limitations on authority Commission.
Sec. 126. Collection of information; confidentiality regulations.
Sec. 127. Monitoring; assessments of significant regulations; reports.
Sec. 128. Authority to restrict mandatory predispute arbitration.
Sec. 129. Registration and supervision of nondepository covered persons.
Sec. 130. Effective date.

Subtitle C—Specific Authorities

Sec. 131. Prohibiting unfair, deceptive, or abusive acts or practices.
Sec. 132. Disclosures.
Sec. 133. Sales practices.
Sec. 134. Pilot disclosures.
Sec. 135. Adopting operational standards to deter unfair, deceptive, or abusive practices.
Sec. 136. Duties.
Sec. 137. Consumer rights to access information.
Sec. 138. Prohibited acts.
Sec. 139. Treatment of remittance transfers.
Sec. 140. Effective date.
Sec. 140A. No authority to require the offering of financial products or services.
Sec. 140B. Appraisal independence requirements.

Subtitle D—Preservation of State Law

Sec. 141. Relation to State law.
Sec. 142. Preservation of enforcement powers of States.
Sec. 143. Preservation of existing contracts.
Sec. 144. State law preemption standards for national banks and subsidiaries clarified.
Sec. 145. Visitorial standards.
Sec. 146. Clarification of law applicable to nondepository institution subsidiaries.
Sec. 147. State law preemption standards for Federal savings associations and subsidiaries clarified.
Sec. 148. Visitorial standards.
Sec. 149. Clarification of law applicable to nondepository institution subsidiaries.
Sec. 150. Effective date.

Subtitle E—Enforcement Powers

Sec. 151. Definitions.
Sec. 152. Investigations and administrative discovery.
Sec. 153. Hearings and adjudication proceedings.
Sec. 154. Litigation authority.
Sec. 155. Relief available.
Sec. 156. Referrals for criminal proceedings.
Sec. 157. Employee protection.
Sec. 158. Effective date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

Sec. 161. Transfer of certain functions.
Sec. 162. Designated transfer date.
Sec. 163. Savings provisions.
Sec. 164. Transfer of certain personnel.
Sec. 165. Incidental transfers.
Sec. 166. Interim authority of the Secretary.

Subtitle G—Regulatory Improvements

Sec. 171. Collection of deposit account data.
Sec. 172. Small business data collection.
Sec. 173. Annual financial autopsy.

Subtitle H—Conforming Amendments

Sec. 181. Amendments to the Inspector General Act of 1978.
Sec. 182. Amendments to the Privacy Act of 1974.
Sec. 183. Amendments to the Alternative Mortgage Transaction Parity Act of 1982.
Sec. 184. Amendments to the Consumer Credit Protection Act.
Sec. 185. Amendments to the Expedited Funds Availability Act.
Sec. 186. Amendments to the Federal Deposit Insurance Act.
Sec. 187. Amendments to the Gramm-Leach-Bliley Act.
Sec. 188. Amendments to the Home Mortgage Disclosure Act of 1975.
Sec. 189. Amendments to division D of the Omnibus Appropriations Act, 2009.
Sec. 190. Amendments to the Homeowners Protection Act of 1998.
Sec. 191. Amendments to the Real Estate Settlement Procedures Act of 1974.
Sec. 192. Amendments to the Right to Financial Privacy Act of 1978.
Sec. 193. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.
Sec. 194. Amendments to the Truth in Savings Act.
Sec. 195. Membership in Financial Literacy and Education Commission.
Sec. 196. Effective date.

TITLE II—IMPROVEMENTS TO THE FEDERAL TRADE COMMISSION ACT

Sec. 201. Amendments to the Federal Trade Commission Act.

TITLE I—CONSUMER FINANCIAL PROTECTION COMMISSION

SEC. 1. DEFINITIONS.

For the purposes of subtitles A through F of this title, the following definitions shall apply:

(1) AFFILIATE.—The term "affiliate" means any person that controls, is controlled by, or is under common control with another person.

(2) BANK HOLDING COMPANY.—The term "bank holding company" has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956.

(3) BOARD.—Except when used in connection with the term "Board of Governors", the term "Board" means the Consumer Financial Protection Oversight Board.

(4) BOARD OF GOVERNORS.—The term "Board of Governors" means the Board of Governors of the Federal Reserve System.

(5) BUSINESS OF INSURANCE.—The term "business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(6) CHAIRMAN.—The term "Chairman" means the Chairman of the Commission established under section 112.

(7) COMMISSION.—The term "Commission" means the Consumer Financial Protection Commission established under this Act.

(8) CONSUMER.—The term "consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual.

(9) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term "consumer financial product or service" means any financial product, other than a Federal tax return, or service to be used by a consumer primarily for personal, family, or household purposes.

(10) COVERED PERSON.—

(A) IN GENERAL.—The term "covered person" means any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service.

(B) EXCLUSION.—The term "covered person" shall not include the Secretary, the Department of the Treasury, any agency or bureau under the jurisdiction of the Secretary, or any person collecting Federal taxes for the United States to the extent such person is acting in such capacity.

(11) CREDIT.—The term "credit" means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(12) CREDIT UNION.—The term "credit union" means a Federal credit union or a State credit union as defined in section 101 of the Federal Credit Union Act.

(13) DEPOSIT.—The term "deposit"—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and

(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(14) DEPOSIT-TAKING ACTIVITY.—The term "deposit-taking activity" means—

(A) the acceptance of deposits, the maintenance of deposit accounts, or the provision of services related to the acceptance of deposits;

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

(C) the receipt of money or its equivalent, as the Commission may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

(15) DESIGNATED TRANSFER DATE.—The term "designated transfer date" has the meaning provided in section 162.

(16) ENUMERATED CONSUMER LAWS.—The term "enumerated consumer laws" means each of the following:

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

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

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

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of such Act.

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

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

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

(H) The Homeowners Protection Act of 1998.

(I) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

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

(K) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(L) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(M) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(17) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term "Federal banking agencies" means all of such agencies.

(18) FAIR LENDING.—The term "fair lending" means fair, equitable, and nondiscriminatory access to credit for both individuals and communities.

(19) FINANCIAL ACTIVITY.—The term "financial activity" means any of the following activities:

(A) Deposit-taking activities.

(B) Extending credit and servicing loans, including—

(i) acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit;

(ii) engaging in any other activity usual in connection with extensions of credit or servicing loans, including performing appraisals of real estate and personal property.

(C) Check cashing and check-guaranty services, including—

(i) authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services; and

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

(D) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the infor-

mation to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(E) Collection of debt related to any consumer financial product or service.

(F) Providing real estate settlement services.

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

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

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

(iii) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Commission.

(H) Acting as an investment adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State).

(I) Acting as financial adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State), including—

(I) providing financial and other related advisory services;

(II) providing educational courses, and instructional materials to consumers on individual financial management matters;

(III) providing credit counseling or tax planning services to any person (excluding the preparation of returns, or claims for refund, of tax imposed by the Internal Revenue Code or advice with respect to positions taken therein, or services regulated by the Secretary of the Treasury under section 330 of title 31, United States Code); or

(IV) providing services to assist a consumer with debt management or debt settlement, with modifying the terms of any extension of credit, or with avoiding foreclosure.

(J) For purposes of this title, the following shall not be considered acting as financial adviser:

(I) Publishing any bona fide newspaper, news magazine or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer.

(II) Providing advice, analyses, or reports that do not relate to any securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act.

(K) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a "financial activity" if with respect to financial data processing the person—

(i) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(ii) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(iii) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

(L) Money transmitting.

(M) Sale, provision or issuance of stored value, except that, in the case of a sale, only if the seller influences the terms or conditions of the stored value provided to the consumer.

(N) Acting as a money services business.

(O) Acting as a custodian of money or any financial instrument.

(P)(i) Any other activity that the Commission defines, by regulation, as a financial activity after finding that—

(I) the activity has, or there is a substantial likelihood that the activity will have, a material adverse impact on the creditworthiness or financial well being of consumers;

(II) the activity is incidental or complementary to any other financial activity regulated by the Commission; or

(III) the activity is entered into or conducted as a subterfuge or with a purpose to evade any requirement under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(ii) For purposes of clause (i)(II), the following activities provided to a covered person shall not be "incidental or complementary":

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

The term "financial activity" shall not include the business of insurance, or the provision of electronic data transmission, routing, intermediate or transient storage, or connections to a system or network, where the person providing such services does not select or modify the content of the electronic data, is not the sender or the intended recipient of the data, and such person transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such data is undifferentiated from other types of data that such person transmits, routes, stores, or provides connections.

(20) FINANCIAL PRODUCT OR SERVICE.—The term "financial product or service" means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(21) FOREIGN EXCHANGE.—The term "foreign exchange" means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(22) INSURED CREDIT UNION.—The term "insured credit union" has the same meaning as in section 101 of the National Credit Union Act.

(23) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(24) MONEY SERVICES BUSINESS.—The term "money services business" means a person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(25) MONEY TRANSMITTING.—The term "money transmitting" means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(26) PAYMENT INSTRUMENT.—The term "payment instrument" means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(27) PERSON.—The term "person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(28) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term "person regulated by a State insurance regulator" means any person who is—

(A) engaged in the business of insurance, and

(B) subject to regulation by any State insurance regulator,

but only to the extent that such person acts in such capacity.

(29) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term "person regulated by the Commodity Futures Trading Commission" means any futures commission merchant, commodity trading adviser, commodity pool operator, introducing broker, boards of trade, derivatives clearing organizations, or multilateral clearing organizations to the extent that such per-

son's actions are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and any agent, employee, or contractor acting on behalf of, registered with, or providing services to such person but only to the extent the person, or the employee, agent, or contractor of such person, acts in a registered capacity.

(30) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The term "person regulated by the Securities and Exchange Commission" means—

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

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

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

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

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

(J) the Municipal Securities Rulemaking Board,

and any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any such person, but only to the extent that the person, or the employee agent, or contractor of such person, acts in a registered capacity.

(31) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The terms "provision of a consumer financial product or service" and "providing a consumer financial product or service" mean the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(32) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term "person that performs income tax preparation activities for consumers" means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

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

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

(33) RELATED PERSON.—

(A) IN GENERAL.—The term "related person", when used in connection with a covered person that is not a bank holding company, credit union, depository institution, means—

(i) any director, officer, employee charged with managerial responsibility, or controlling stockholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Commission (by regulation or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant), with respect to such covered person, who knowingly or recklessly participates in any—

(I) violation of any law or regulation; or

(II) breach of fiduciary duty.

(B) TREATMENT OF A RELATED PERSON AS A COVERED PERSON.—Any person who is a related person under subparagraph (A) shall be deemed to be a covered person for all purposes of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H.

(34) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(35) SERVICE PROVIDER.—

(A) IN GENERAL.—The term "service provider" means any person who provides a material service to a covered person in the provision of a consumer financial product or service, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;

(ii) has direct interaction with a consumer (whether in person or via telecommunication device or other similar technology) regarding the consumer financial product or service; or

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

(B) EXCEPTIONS.—The term "service provider" shall not apply to a person solely by virtue of such person providing or selling to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service;

(ii) a service that does not materially affect the terms or conditions of the consumer financial product or service, its performance or operation, or the propensity of a consumer to obtain or use such product or service; or

(iii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(36) STATE.—The term "State" means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(37) STORED VALUE.—The term "stored value"—

(A) means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically; and

(B) includes a prepaid debit card or product (other than a card or product used solely for telephone services) or any other similar product,

regardless of whether the amount of the funds or monetary value may be increased or reloaded.

Subtitle A—Establishment of the Commission

SEC. 111. ESTABLISHMENT OF THE CONSUMER FINANCIAL PROTECTION COMMISSION.

(a) COMMISSION ESTABLISHED.—There is established the Consumer Financial Protection Commission as an independent agency to regulate the provision of consumer financial products or services under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(b) PRINCIPAL OFFICE.—The principal office of the Commission shall be located in the city of Washington, District of Columbia, at 1 or more sites.

SEC. 112. COMPOSITION OF THE COMMISSION.

(a) COMPOSITION OF THE COMMISSION.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate—

(1) from among individuals who are citizens of the United States; and

(2) who have strong competencies and experiences related to consumer financial protection.

(b) AFFILIATION.—With respect to members appointed pursuant to subsection (a), not more than 3 shall be members of any one political party.

(c) CHAIRMAN OF THE COMMISSION.—

(1) APPOINTMENT.—From among the members of the Commission, the President shall designate 1 member of the Commission to serve as the Chairman of the Commission.

(2) AUTHORITY.—The Chairman shall be the principal executive officer of the Commission, and shall exercise all of the executive and administrative functions of the Commission, including with respect to—

(A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman);

(B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission; and

(C) the use and expenditure of funds.

(3) LIMITATION.—In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) REQUESTS OR ESTIMATES RELATED TO APPROPRIATIONS.—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

(d) TERMS OF COMMISSIONERS.—

(1) IN GENERAL.—Each member of the Commission, including the Chairman, shall serve for a term of 5 years.

(2) REMOVAL FOR CAUSE.—The President may remove any member of the Commission only for inefficiency, neglect of duty, or malfeasance in office.

(3) VACANCIES.—Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term to which that member's predecessor was appointed (including the Chairman) shall be appointed only for the remainder of the term.

(4) CONTINUATION OF SERVICE.—Each member of the Commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate, except that a member may not continue to serve more than 1 year after the date on which that member's term would otherwise expire under this subsection.

(5) INITIAL APPOINTMENTS STAGGERED.—The members of the Commission (including the Chairman) shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 3, 4, and 5 years, respectively.

(6) OTHER EMPLOYMENT.—No Commissioner shall engage in any other business, vocation, or employment.

(e) NO IMPAIRMENT BY REASON OF VACANCIES.—No vacancy in the members of the Commission shall impair the right of the remaining members of the Commission to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only 3 members serving on the Commission because of vacancies in the Commission, 2 members of the Commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the Commission because of vacancies in the Commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of Commission members to decline to 2.

(f) SEAL.—The Commission shall have an official seal.

(g) COMPENSATION.—

(1) CHAIRMAN.—The Chairman shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

(2) OTHER MEMBERS OF THE COMMISSION.—The 4 other members of the Commission shall each receive compensation at the rate prescribed for level II of the Executive Schedule under section 5314 of title 5, United States Code.

SEC. 113. CONSUMER FINANCIAL PROTECTION OVERSIGHT BOARD.

(a) ESTABLISHED.—There is hereby established the Consumer Financial Protection Oversight Board as an instrumentality of the United States.

(b) DUTIES AND POWERS.—

(1) DUTY TO ADVISE COMMISSION.—The Board shall advise the Commission on—

(A) the consistency of a proposed regulation of the Commission with prudential, market, or systemic objectives administered by the agencies that comprise the Board;

(B) the overall strategies and policies in carrying out the duties of the Commission under this title; and

(C) actions the Commission can take to enhance and ensure that all consumers are subject to robust financial protection.

(2) LIMITATION ON POWERS.—The Board may not exercise any executive authority, and the Commission may not delegate to the Board any of the functions, powers, or duties of the Commission.

(c) COMPOSITION.—The Board shall be comprised of 7 members as follows:

(1) The Chairman of the Board of Governors.

(2) The head of the agency responsible for chartering and regulating national banks.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Chairman of the National Credit Union Administration.

(5) The Chairman of the Federal Trade Commission.
(6) The Secretary of Housing and Urban Development.
(7) The Chairman of the liaison committee of representatives of State agencies to the Financial Institutions Examination Council.

(d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—
(1) COMPOSITION.—Notwithstanding subsection (c), the President, by and with the advice and consent of the Senate, shall appoint 5 additional members of the Board from among experts in the fields of consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, or representatives of communities that have been significantly impacted by higher-priced mortgage loans, as such communities are identified by the Commission through an analysis of data received by reason of the provisions of the Home Mortgage Disclosure Act of 1975 or other data on lending patterns.
(2) AFFILIATION.—With respect to members appointed pursuant to paragraph (1), not more than 3 shall be members of any one political party.

(e) MEETINGS.—
(1) IN GENERAL.—The Board shall meet upon notice by the Commission, but in no event shall the Board meet less frequently than once every 3 months.
(2) SPECIAL MEETINGS.—Any member of the Board may, upon giving written notice to the Commission, require a special meeting of the Board.

(f) PROHIBITION ON ADDITIONAL COMPENSATION.—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(g) COMPLAINTS RELATED TO REQUIRED OFFERING OF SPECIFIC FINANCIAL PRODUCTS OR SERVICES.—The Board shall establish procedures to receive and analyze complaints from any person claiming that the Commission is not in compliance with the requirements under section 140A.

SEC. 114. EXECUTIVE AND ADMINISTRATIVE POWERS.

The Chairman of the Commission may exercise all executive and administrative functions of the Commission, including to—
(1) establish regulations for conducting the Commission's general business in a manner not inconsistent with this title;
(2) bind the Commission and enter into contracts;
(3) direct the establishment of and maintain divisions or other offices within the Commission in order to fulfill the responsibilities of this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H, and to satisfy the requirements of other applicable law;
(4) coordinate and oversee the operation of all administrative, enforcement, and research activities of the Commission;
(5) adopt and use a seal;
(6) determine the character of and the necessity for the Commission's obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid;
(7) delegate authority, at the Chairman's discretion, to any officer or employee of the Commission to take action under any provision of this title or under other applicable law;
(8) to implement this title and the Commission's authorities under the enumerated consumer laws and under subtitles F and H through regulations, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and
(9) perform such other functions as may be authorized or required by law.

SEC. 115. ADMINISTRATION.

(a) OFFICERS.—The Commission shall appoint the following officials:
(1) A secretary, who shall be charged with maintaining the records of the Commission and performing such other activities as the Commission directs.
(2) A general counsel, who shall be charged with overseeing the legal affairs of the Commission and performing such other activities as the Commission directs.
(3) An inspector general, who shall have the authority and functions of an inspector general of a designated Federal entity under the Inspector General Act of 1978 (5 U.S.C. App. 3).
(4) An Ombudsperson, who shall—
(A) develop and maintain expertise in and understanding of the law relating to consumer financial products;
(B) at the request of a Federal agency or a State agency, and with the prior approval of the Commission, advise such agency with respect to actions that may affect consumers;

(C) advise consumers who may have a legitimate potential or actual claim against a Federal agency involving the provision of consumer financial products regarding their rights under this title;

(D) identify Federal agency actions that have potential implications for consumers and, if appropriate, and with the prior approval of the Commission, advise the relevant Federal agencies with respect to those implications;

(E) provide information to private citizens, civic groups, Federal agencies, State agencies, and other interested parties regarding the rights of those parties under this title;

(F) develop, maintain, and provide expertise designed to assist covered persons, especially smaller depository institutions and other smaller entities to comply with regulations and other requirements issued to implement the provisions of this title, and where such assistance for smaller depository institutions shall be provided jointly by the Commission and the appropriate Federal banking agency;

(G) develop procedures to assist covered persons, especially smaller depository institutions and other smaller entities, in responding to or challenging actions taken by the Commission to implement the provisions of this title and to ensure that safeguards exist to preserve the confidentiality of covered persons using those procedures; and

(H) perform such other duties as the Commission may delegate to the Ombudsperson.

(b) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Commission may fix the number of, and appoint and direct, all employees of the Commission.

(B) EXPEDITED HIRING.—The Commission may appoint, without regard to the provisions of sections 3309 through 3318, of title 5, United States Code, candidates directly to positions for which public notice has been given.

(C) HIRING VETERANS.—In hiring employees, the Commission shall establish appropriate targets, including timetables, to hire veterans (as defined in paragraphs (1) and (2) of section 2108 of title 5, United States Code) as employees of the Commission. In establishing appropriate targets under this paragraph, the Commission may consider, among other relevant factors, the proportion of veterans hired by Federal agencies with comparable functions or types of occupations and their experiences in hiring veterans.

(2) COMPENSATION.—

(A) PAY.—The Commission shall fix, adjust, and administer the pay for all employees of the Commission without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(B) BENEFITS.—The Commission may provide additional benefits to Commission employees if the same type of benefits are then being provided by the Board of Governors or, if not then being provided, could be provided by the Board of Governors under applicable provisions of law or regulations.

(C) MINIMUM STANDARD.—The Commission shall at all times provide compensation and benefits to classes of employees that, at a minimum, are equivalent to the compensation and benefits provided by the Board of Governors for the corresponding class of employees in any fiscal year.

(c) SPECIFIC FUNCTIONAL UNITS.—

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

(A) conducting research on consumer financial counseling and education, including—

(i) on the topics of debt, credit, savings, financial product usage, and financial planning;

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

(iii) identifying ways to incorporate new technology for the delivery and evaluation of financial counseling and education efforts;

(B) researching, analyzing, and reporting on—

(i) current and prospective developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates;

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

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

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

(v) experiences of traditionally underserved consumers, including unbanked and under-banked consumers, regarding consumer financial products or services;

(C) identifying priorities for consumer financial education efforts, based on consumer complaints, research or analysis conducted pursuant to subparagraph (A), or other information; and

(D) testing and identifying methods of educating consumers to determine which methods are most effective.

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

(3) CONSUMER COMPLAINTS.—

(A) IN GENERAL.—The Commission shall establish a unit whose functions shall include establishing a central database, or utilizing an existing database, for collecting and tracking information on consumer complaints about consumer financial products or services and resolution of complaints.

(B) COORDINATION.—In performing the functions described in subparagraph (A), the Commission shall coordinate with the Federal banking agencies, the Federal Trade Commission, other Federal agencies, and other regulatory agencies or enforcement authorities.

(C) DATA SHARING REQUIRED.—To the extent permitted by law and the regulations prescribed by the Commission regarding the confidential treatment of information, the Commission shall share data relating to consumer complaints with Federal banking agencies, other Federal agencies, and State regulators. To the extent permitted by law and the regulations prescribed by the Federal banking agencies and other Federal agencies regarding the confidential treatment of information, the Federal banking agencies and other Federal agencies, respectively, shall share data relating to consumer complaints with the Commission.

(4) CONSUMER FINANCIAL EDUCATION.—

(A) IN GENERAL.—The Commission shall establish a unit to be named the Office of Financial Literacy, whose functions shall include activities designed to facilitate the education of consumers on consumer financial products and services, including through the dissemination of materials to consumers on such topics.

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

(C) DUTIES.—Such unit shall—

(i) develop goals for programs to be provided by persons that provide consumer financial education and counseling, including programs through which such persons—

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

(II) help individuals understand basic banking and savings tools;

(III) help individuals understand their credit history and credit score;

(IV) assist individuals in efforts to plan for major purchases, reduce their debt, and improve their financial stability; and

(V) work with individuals to design plans for long-term savings;

(ii) develop recommendations regarding effective certification of persons providing programs, or performing the activities, described in clause (i), including recommendations regarding—

(I) certification processes and standards for certification;

(II) appropriate certifying bodies; and

(III) mechanisms for funding the certification processes;

(iii) develop a technology tool to collect data on financial education and counseling outcomes; and

(iv) conduct research to identify effective methods, tools, technoloy, and strategies to educate and counsel consumers about personal finance management, including on the topics of debt, credit, savings, financial product usage, and financial planning.

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

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

(I) provide information and resources to community organizations, nonprofit organizations, and other entities to assist in helping educate consumers about consumer financial products and services; and

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

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

(d) SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONSUMER COMPLAINTS AND INQUIRIES.—

(1) CALL INTAKE SYSTEM.—The Consumer Financial Protection Commission shall establish a single, toll-free telephone number for consumer complaints and inquiries concerning institutions regulated by such agencies and a system for collecting and monitoring complaints and, as soon as practicable, a system for routing such calls to the Federal financial institution regulatory agency that primarily supervises the financial institution, or that is otherwise the appropriate Federal agency to address the subject of the complaint or inquiry.

(2) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate call transfers from the system established under paragraph (1) if—

(A) the State agency's system has the functional capacity to receive calls routed by the system; and

(B) the State agency has satisfied any conditions of participation in the system that the Council, coordinating with State agencies through the chairperson of the State Liaison Committee, may establish.

(e) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal financial institution regulatory agencies shall submit 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 describing the agencies' efforts to establish—

(1) a public interagency Web site for directing and referring Internet consumer complaints and inquiries concerning any financial institution to the Consumer Financial Protection Commission for purposes of collecting, monitoring, and responding to such complaints and, where appropriate, a system for referring complaints to the Federal financial institution regulatory agency, other Federal agency, or State agency that is otherwise the appropriate agency to address the subject of the complaint or inquiry; and

(2) a system to expedite the prompt and effective rerouting of any misdirected consumer complaint or inquiry documents between or among the agencies, with prompt referral of any complaint or inquiry to the appropriate Federal financial institution regulatory agency, and to participating State agencies.

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

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the Commission shall establish within the Commission 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 Commission may delegate the Office which shall include the following functions:

(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 Commission, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

(B) Coordinating fair lending enforcement efforts of the Commission 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.

(D) Providing annual reports to the Congress on the Commission's efforts to fulfill its fair lending mandate.

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

(A) shall be appointed by the Commission;

(B) shall carry out such duties as the Commission may delegate to such Assistant Director; and

(C) shall serve as the Director of the Office of Fair Lending and Equal Opportunity.

(4) PROHIBITIONS ON PARTICIPATION IN PROGRAMS WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.—

(A) PROHIBITION.—The Director of the Office of Fair Lending and Equal Opportunity may not allow a covered organization to participate in any program established by such Director.

(B) COVERED ORGANIZATION.—In this paragraph, the term "covered organization" means any of the following:

(i) Any organization that has been indicted for a violation under any Federal or State law governing the financing of a campaign for election for public office or any law governing the administration of an election for public office, including a law relating to voter registration.

(ii) Any organization that had its State corporate charter terminated due to its failure to comply with Federal or State lobbying disclosure requirements.

(iii) Any organization that has filed a fraudulent form with any Federal or State regulatory agency.

(iv) Any organization that—

(I) employs any applicable individual, in a permanent or temporary capacity;

(II) has under contract or retains any applicable individual; or

(III) has any applicable individual acting on the organization's behalf or with the express or apparent authority of the organization.

(C) ADDITONAL DEFINITIONS.—In this paragraph:

(i) The term "organization" includes the Association of Community Organizations for Reform Now (in this paragraph referred to as "ACORN") and any ACORN-related affiliate.

(ii) The term "ACORN-related affiliate" means any of the following:

(I) Any State chapter of ACORN registered with the Secretary of State's office in that State.

(II) Any organization that shares directors, employees, or independent contractors with ACORN.

(III) Any organization that has a financial stake in ACORN.

(IV) Any organization whose finances, whether federally funded, donor-funded, or raised through organizational goods and services, are shared or controlled by ACORN.

(iii) The term "applicable individual" means an individual who has been indicted for a violation under Federal or State law relating to an election for Federal or State office.

(D) REVISION OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to carry out the provisions of this paragraph relating to contracts.

(E) SEVERABILITY.—If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provision to any other person or circumstance shall not be affected.

SEC. 116. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Commission shall establish a Consumer Advisory Board to advise and consult with the Commission in the exercise of the functions of the Commission under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry.

(b) MEMBERSHIP.—

(1) IN GENERAL.—In appointing the members of the Consumer Advisory Board, the Commission shall seek—

(A) to assemble experts in financial services, community development, fair lending and civil rights, consumer protection, and consumer financial products or services; and

(B) to represent the interests of covered persons and consumers.

(2) PROHIBITION ON MEMBERSHIP WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.—The Commission may not appoint an employee of a covered organization (as defined in section 115(f)(4)(B)) to the Consumer Advisory Board.

(c) POLITICAL AFFILIATION.—Not more than 1 more than half of the members of the Consumer Advisory Board may be members of the same political party.

(d) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Chairman of the Commission, but, at a minimum, shall meet at least twice in each year.

(e) 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 Commission 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.

SEC. 117. COORDINATION.

(a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The Commission shall coordinate with the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Secretary of the Treasury, the Federal Trade Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of, and enforcement related to, consumer and investment products, services, and laws.

(b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

(1) IN GENERAL.—The Commission shall coordinate with each agency that is a member of the Financial Literacy and Education Commission established by the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.) to assist each agency in enhancing its existing financial literacy and education initiatives to better achieve the goals in paragraph (2) and to ensure the consistency of such initiatives across Federal agencies.

(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the Commission shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

(c) COORDINATION.—The Commission may coordinate investigations, compliance examinations, information sharing, and related activities in support of activities undertaken pursuant to the Fair Housing Act by other Federal agencies.

SEC. 118. REPORTS TO THE CONGRESS.

(a) REPORTS REQUIRED.—The Commission shall prepare and submit to the President and the appropriate committees of the Congress a report at the beginning of each regular session of the Congress, beginning with the session following the designated transfer date.

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

(1) a list of the significant regulations and orders adopted by the Commission, as well as other significant initiatives conducted by the Commission, during the preceding year and the Commission's plan for regulations, orders, or other initiatives to be undertaken during the upcoming period;

(2) an analysis of complaints about consumer financial products or services that the Commission has received and collected during the preceding year;

(3) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Commission is a party (including adjudication proceedings conducted under subtitle E) during the preceding year;

(4) the actions taken regarding regulations, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions, including descriptions of the types of such covered persons, financial activities, and consumer financial products or services affected by such regulations, orders, and supervisory actions;

(5) an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws;

(6) an analysis of the Commission's efforts to fulfill the fair lending mission of the Commission; and

(7) an appraisal of the regulatory and legal difficulties encountered by the Commission in carrying out the mission and duties of the Commission with respect to consumer protection, including a description of—

(A) the difficulties and hardships encountered with respect to coordinating with other Federal and State government entities;

(B) the regulatory and enforcement limitations placed on the Commission by this Act;

(C) the practices of persons, covered and uncovered under this Act, that allow such persons to harm consumers and escape regulation or enforcement, including any trends identified; and

(D) legislative and administrative recommendations with respect to solving or alleviating identified difficulties.

(c) APPEARANCE BEFORE CONGRESS.—The Commissioners shall appear before the appropriate committees of Congress as requested to—

(1) discuss the efforts, activities, objectives, and plans of the Commission; and

(2) discuss and answer questions concerning the report submitted under subsection (a).

SEC. 118A. GAO SMALL BUSINESS STUDIES.

(a) STUDIES REQUIRED.—Not later than the end of the 3-year period beginning on the designated transfer date, and also 3 years thereafter, the Comptroller General of the United States shall carry out a study to examine the effects that regulations issued by the Commission have on small businesses.

(b) REPORT.—At the conclusion of each study required under subsection (a), the Comptroller General of the United States shall issue a report to the Congress containing the findings and determinations made by the Comptroller General in carrying out such study.

SEC. 119. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM THE BOARD OF GOVERNORS.—

(1) TRANSFER REQUIRED.—Each year, beginning on the designated transfer date, the Board of Governors shall transfer funds in an amount equaling 10 percent of the Federal Reserve System's total system expenses (as reported in the Budget Review of the Board of Governors most recent Annual Report to Congress) to the Commission for the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and transferred under subtitles F and H.

(2) PROCEDURES.—The Board of Governors, in consultation with the Commission, shall make appropriate arrangements to transfer funds to the Commission in accordance with this subsection.

(b) FEES AND ASSESSMENTS.—

(1) ASSESSMENT REQUIRED.—

(A) IN GENERAL.—Taking into account such other sums available to the Commission and subject to the provisions of this subsection and subsection (d), the Commission shall assess fees on covered persons to meet the Commission's expenses for carrying out the duties and responsibilities of the Commission, including supervising such covered persons.

(B) BASIS FOR ASSESSMENT.—The Commission shall assess fees on covered persons pursuant to this subsection based on the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(2) REGULATIONS.—

(A) IN GENERAL.—The Commission shall prescribe regulations to govern the imposition and collection of fees and assessments.

(B) FACTORS REQUIRED TO BE ADDRESSED.—Regulations prescribed by the Commission under this subsection shall specify and define—

(i) the basis of fees or assessments (such as the outstanding number of consumer credit accounts, off-balance sheet receivables attributable to the covered person, total consolidated assets, total assets under management, or volume of consumer financial transactions or use of service providers);

(ii) the amount and frequency of fees or assessments; and

(iii) such other factors that the Commission determines are appropriate, which shall include a covered person's compliance record under the enumerated consumer laws, the authorities transferred under subtitles F and H, and this title.

(3) ASSESSMENTS ON DEPOSITORY INSTITUTION COVERED PERSONS.—

(A) DEPOSITORY INSTITUTION COVERED PERSON DEFINED.—For purposes of this section, the term "depository institution covered person" means a covered person that is an insured depository institution or credit union.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Commission shall assess fees for supervision as are appropriate on depository institution covered persons, taking into account the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(ii) LIMITATION ON CERTAIN FEES.—The Commission shall not assess examination fees on an institution referred to in section 123(a), or an institution whose examination responsibilities have been delegated to an appropriate agency, pursuant to section 122(c)(10).

(iii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Commission under this subparagraph may be established at levels necessary to meet the Commission's expenses for carrying out the duties and responsibilities of the Commission under this title with regard to depository institution covered persons.

(C) COORDINATION DURING IMPLEMENTATION PERIOD.—The Commission and the agencies responsible for chartering and or supervising depository institution covered persons shall coordinate on the levels of fees assessed on depository institution covered persons under this paragraph, so that levels of assessments under this subparagraph combined with levels of assessments by agencies responsible for chartering and or supervising depository institution covered persons shall be no more than the assessments such depository institution covered person was required to pay for the 12-month period ending on December 31, 2009.

(D) MARGINAL ASSESSMENT RATE.—

(i) IN GENERAL.—In setting assessment rates for depository institution covered persons, the Commission shall not impose assessments that result in higher marginal assessment rates for depository institution covered persons with assets of less than $25,000,000,000 than the marginal rates for depository institutions covered persons with assets that exceed that amount.

(ii) RULE OF CONSTRUCTION.— Clause (i) shall not be construed as limiting or impairing the authority of the Commission to set assessments that would result in higher marginal assessment rates on the larger depository institution covered persons.

(E) LIMITATIONS ON ASSESSMENTS.—

(i) ASSESSMENTS FOR ADMINISTRATIVE COSTS.—Notwithstanding any provision in this title, no depository institution covered person shall be charged an assessment to be used for the supervision, examination, enforcement or regulation by the Commission of nondepository covered persons.

(ii) AMOUNTS PAID FOR CONSUMER COMPLIANCE SUPERVISION.—Notwithstanding any provision in this title, no depository institution covered person shall pay more for consumer compliance supervision than it paid before the date of enactment of this Act.

(4) ASSESSMENTS ON NONDEPOSITORY COVERED PERSONS.—

(A) NONDEPOSITORY COVERED PERSON DEFINED.—For purposes of this section, the term "nondepository covered person"—

(i) means a covered person that is not a credit union or insured depository institution; and

(ii) includes any bank holding company.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Commission shall assess fees for registration, examination, and supervision of nondepository covered persons.

(ii) BASIS FOR FEE AMOUNTS.— Fees assessed by the Commission under this subparagraph may be established at levels necessary to meet the Commission's expenses for carrying out the duties and responsibilities of the Commission, including supervising such covered persons, taking into account such other sums available to the Commission.

(iii) REGISTRATION FEE MINIMUMS.—Registration fees imposed on a nondepository covered person under this paragraph shall, at a minimum, be imposed on such covered person at the time the person registers (or periodically renews any such registration) with the Commission, in accordance with regulations prescribed by the Commission.

(C) NONDEPOSITORY COVERED PERSON ASSESSMENT NOT LESS THAN FOR DEPOSITORY COVERED PERSONS.—Assessment rates levied by the Commission under this section on a nondepository institution covered persons shall be no less than assessments levied by the Commission under this section on a depository institution covered person with similar characteristics.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and the laws and authorities transferred under subtitles F and H, there are authorized to be appropriated to the Commission such sums as may be necessary for any fiscal year.

(2) APPORTIONMENT.—Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

(3) OTHER AVAILABLE FUNDS TAKEN INTO ACCOUNT.—Sums appropriated under this subsection shall take into account such other sums available to the Commission under this section.

(d) CONSUMER FINANCIAL PROTECTION COMMISSION DEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the "Consumer Financial Protection Commission Depository Institution Fund" (hereafter in this section referred to as the "CFPA Depository Fund").

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Depository Fund shall not be used in the supervision and examination of nondepository institution covered persons.

(2) ALL TRANSFERRED FUNDS DEPOSITED.—All amounts transferred to the Commission under subsection (a) shall be deposited into the CFPA Depository Fund.

(3) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Commission shall deposit all amounts received from assessments under subsection (b)(3) in the CFPA Depository Fund.

(e) CONSUMER FINANCIAL PROTECTION COMMISSION NONDEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund called the Consumer Financial Protection Commission Nondepository Institution Fund (hereafter in this section referred to as the "CFPA Nondepository Fund").

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Nondepository Fund shall not be used for the supervision and examination of depository institution covered persons.

(2) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Commission shall deposit all amounts received from assessments under subsection (b)(4) in the CFPA Nondepository Fund.

(f) GENERAL PROVISIONS RELATING TO FUNDS.—

(1) MAINTENANCE OF FUNDS.—

(A) COMMISSION FUNDS MAINTAINED BY TREASURY.—The Consumer Financial Protection Commission Depository Institution Fund established under subsection (d) and the Consumer Financial Protection Commission Nondepository Institution Fund established under subsection (e) shall each be—

(i) maintained and administered by the Secretary; and

(ii) maintained separately and not commingled.

(B) COMMISSION'S AUTHORITY.—Any provision of this Act forbidding the commingling or use of the CFPA Depository Fund and the CFPA Nondepository Fund shall not be construed as limiting or impairing the authority of the Commission to use the same facilities and resources in the course of conducting supervisory and regulatory functions with respect to depository institutions and nondepository institutions, or to integrate such functions.

(C) ACCOUNTING REQUIREMENTS.—

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Commission shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (B) and shall allocate, in the manner provided in subparagraph (D), any such costs and expenses incurred by the Commission—

(I) with respect to depository institution covered persons, to the CFPA Depository Fund; and

(II) with respect to nondepository covered persons, to the CFPA Nondepository fund.

(D) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Commission shall be allocated—

(i) fully to the CFPA Depository Fund if the expense was incurred directly as a result of the Commission's responsibilities solely with respect to depository institution covered persons;

(ii) fully to the CFPA Nondepository Fund, if the expense was incurred directly as a result of the Commission's responsibilities solely with respect to nondepository covered persons;

(iii) between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of depository institution covered persons, and nondepository covered persons; and

(iv) if the Commission is unable to make a complete allocation under clause (i), (ii), or (iii), between the CFPA Depository Fund and the

CFPA Nondepository Fund, in amounts reflecting the relative proportion that, as of the end of the preceding year—

(I) the aggregate assets of all depository institution covered persons bears to the aggregate assets of all covered persons; and

(II) the aggregate assets of all nondepository covered persons bears to the aggregate assets of all covered persons.

(E) COMMISSION FUND.—The "Commission fund" means the Consumer Financial Protection Commission Depository Institution Fund established under subsection (d), and, the Consumer Financial Protection Commission Nondepository Institution Fund established under subsection (e), and the Consumer Financial Protection Commission Civil Penalty Fund established under subsection (g).

(2) INVESTMENT.—

(A) AMOUNTS IN FUNDS MAY BE INVESTED.—The Commission may request the Secretary to invest the portion of any Commission fund that, in the Commission's judgment, is not required to meet the current needs of such fund.

(B) ELIGIBLE INVESTMENTS.—Investments pursuant to subparagraph (A) shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Commission fund involved, as determined by the Commission.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the respective Commission Fund shall be credited to and form a part of the respective Commission Fund.

(3) USE OF FUNDS.—Funds obtained by, transferred to, or credited to any Commission fund shall be immediately available to the Commission, and remain available until expended, to pay the expenses of the Commission in carrying out the duties and responsibilities of the Commission including the payment of compensation of the officers and employees of the Commission.

(4) FEES, ASSESSMENTS AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to any Commission fund shall not be construed to be Government funds or appropriated monies.

(5) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in any Commission fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(g) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Treasury of the United States a fund to be known as the "Consumer Financial Protection Commission Civil Penalty Fund" (hereafter in this section referred to as the "Civil Penalty Fund").

(2) DEPOSITS.— If the Commission obtains a civil penalty against any person in any judicial or administrative action under this title, any law or authority transferred under subtitles F and H, or any enumerated consumer law, the Commission shall deposit into the Civil Penalty Fund the amount of the penalty collected.

(3) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Commission, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under this title, the law and authorities transferred under subtitles F and H, or any enumerated consumer law.

SEC. 120. AMENDMENTS RELATING TO OTHER ADMINISTRATIVE PROVISIONS.

(a) ACT OF OCTOBER 28, 1974.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting "the Consumer Financial Protection Commission," after "Federal Deposit Insurance Corporation,".

(b) PAPERWORK REDUCTION ACT.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) by inserting "the Consumer Financial Protection Commission," after "the Securities and Exchange Commission,".

SEC. 120A. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act.

Subtitle B—General Powers of the Commission

SEC. 121. MANDATE AND OBJECTIVES.

(a) MANDATE.—The Commission shall seek to promote transparency, simplicity, fairness, accountability, and equal access in the market for consumer financial products or services.

(b) OBJECTIVES.—The Commission may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes of ensuring that, with respect to consumer financial products or services—

(1) consumers have and can use the information they need to make responsible decisions about consumer financial products or services;

(2) consumers are protected from abuse, unfairness, deception, and discrimination;

(3) markets for consumer financial products or services operate fairly and efficiently with ample room for sustainable growth and innovation; and

(4) traditionally underserved consumers and communities have equal access to responsible financial services.

SEC. 122. AUTHORITIES.

(a) IN GENERAL.—The Commission may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer, enforce, and otherwise implement the provisions of this title, the authorities transferred in subtitles F and H, and the enumerated consumer laws.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Commission may prescribe regulations and issue orders and guidance as may be necessary or appropriate to enable it to administer and carry out the purposes and objectives of this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws, and to prevent evasions of this title, any such authority, and any such law.

(2) STANDARDS FOR RULEMAKING.—In prescribing a regulation under this title or pursuant to the authorities transferred under subtitles F and H or the enumerated consumer laws, the Commission shall—

(A) consider the potential benefits and costs to consumers and covered persons, including the potential reduction of consumers' access to consumer financial products or services, resulting from such regulation; and

(B) consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Commission, by regulation or order, may conditionally or unconditionally exempt any covered person, service provider, or any consumer financial product or service or any class of covered persons, class of service providers, or consumer financial products or services, from any provision of this title, any enumerated consumer law, or from any regulation under any such provision or law, as the Commission deems necessary or appropriate to carry out the purposes and objectives of this title taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption by regulation or order as permitted in subparagraph (A), the Commission shall as appropriate take into consideration the following:

(i) The total assets of the covered person.

(ii) The volume of transactions involving consumer financial products or services in which the covered person engages.

(iii) The extent to which the covered person engages in 1 or more financial activities.

(iv) Existing laws or regulations which are applicable to the consumer financial product or service and the extent to which such laws or regulations provide consumers with adequate protections.

(C) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, amending, or affecting any authority under sections 304(a), 304(i), 305(a), and 306(b) of the Home Mortgage Disclosure Act of 1975 and sections 703(a)(1), 703(a)(2), 703(a)(3), 705(f), and 705(g) of the Equal Credit Opportunity Act for determining whether a covered person should be provided an exemption.

(c) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—Except as provided under section 123, the Commission may on a periodic basis examine a covered person or service provider, with respect to any consumer financial product or service, for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulations prescribed by the Commission under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) EXAMINATION PROGRAM.—The Commission shall exercise any authority under paragraph (1) in a manner designed to ensure that such authorities are exercised with respect to covered persons or service providers, without regard to charter or corporate form, based on the Commission's assessment of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable, the following factors:

(A) The asset size of the covered persons.

(B) The volume of transactions involving consumer financial products or services in which the covered persons engage.

(C) The risks to consumers created by the provision of such consumer financial products or services.

(D) In the case of State-chartered institutions, the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—The Commission shall coordinate its supervisory activities with the supervisory activities conducted by the Federal banking agencies and the State bank supervisors, including establishing their respective schedules for examining covered persons and requirements regarding reports to be submitted by covered persons.

(4) REPORTS.—The Commission may require reports from a covered person for purposes of ensuring compliance with the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Commission under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(5) CONTENT OF REPORTS.—The reports authorized in paragraph (4) may include such information as necessary to keep the Commission informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other law that the Commission has jurisdiction to enforce; and

(B) matters related to the provision of consumer financial products or services including the servicing or maintenance of accounts or extensions of credit.

(6) USE OF EXISTING REPORTS.—In general, the Commission shall, to the fullest extent possible, use—

(A) reports that a covered person, or any affiliate thereof, or any service provider to such covered person or affiliate, has provided or been required to provide to a Federal or State agency; and

(B) information that has been reported publicly.

(7) ACCESS BY THE COMMISSION TO REPORTS OF OTHER REGULATORS.—

(A) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Commission shall have access to any report of examination or financial condition, including a report containing data regarding consumer complaints, made by a Federal banking agency or other Federal agency having supervision of a covered person, or a service provider, (other than returns and return information described in section 6103 of the Internal Revenue Code of 1986) and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO COMMISSION.—In addition to the reports described in subparagraph (A), a Federal banking agency may, in its discretion, furnish to the Commission any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by such agency under authority of any Federal law.

(8) ACCESS BY OTHER REGULATORS TO REPORTS OF THE COMMISSION.—

(A) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a Federal banking agency, a State regulator, or any other Federal agency having supervision of a covered person shall have access to any report of examination made by the Commission with respect to the covered person or service provider, and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in subparagraph (A), the Commission may, in the dis-

cretion of the Commission, furnish to a Federal banking agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by the Commission under authority of any Federal law.

(9) PRESERVATION OF AUTHORITY.—No provision in paragraph (3) shall be construed as preventing the Commission from conducting an examination authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law. No provision of this title shall be construed as limiting the authority of the Commission to require reports from a covered person, as permitted under paragraph (1), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.

(10) DELEGATION.—

(A) IN GENERAL.—The Commission may delegate its examination authorities under this title to any appropriate agency, as defined in section 123, for any insured depository institution or insured credit union that is not subject to section 123 upon a petition by an appropriate agency.

(B) STANDARD FOR DELEGATION.—The Commission shall provide such delegation if, in the Commission's sole discretion, the Commission determines that—

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

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

(iii) such capability is comparable to or superior to the capability of the Commission, in terms of expertise, demonstrated commitment, and overall effectiveness, in enforcing such compliance.

(C) EFFECT OF DELEGATION.—The insured depository institution or insured credit union shall be subject to the examination process described in section 123(b).

(D) NO EFFECT ON ENFORCEMENT.—The Commission's delegation authority under this paragraph shall not apply to the Commission's enforcement responsibilities under subsection (e).

(11) REPORTS OF TAX LAW NONCOMPLIANCE.—The Commission shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law other than section 123 and subsections (f) and (h), to the extent that a Federal law authorizes the Commission and another Federal agency to prescribe regulations, issue guidance, conduct examinations, or require reports under that law for purposes of assuring compliance with this title, any enumerated consumer law, the laws for which authorities were transferred under subtitles F and H, and any regulations prescribed under this title or pursuant to any such authority, the Commission shall have the exclusive authority to prescribe regulations, issue guidance, conduct examinations, require reports, or issue exemptions with regard to any person subject to that law and with respect to any activity regulated under any enumerated consumer law.

(e) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE COMMISSION TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Commission and another Federal agency to enforce a provision of a law, the Commission shall have primary enforcement authority to enforce the provision of that Federal law with respect to any person in accordance with this subsection.

(2) COORDINATION WITH FEDERAL TRADE COMMISSION.—

(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the Federal Trade Commission shall serve written notice to the Commission of any enforcement action prior to initiating such an enforcement action, except that if the Federal Trade Commission determines that prior notice is not feasible, the Commission may provide notice immediately upon initiating such enforcement action.

(B) INTERVENTION BY THE COMMISSION.—Upon receiving any notice under subparagraph (A) with respect to an enforcement action, the Commission may intervene in such enforcement action and upon intervening—

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

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

(C) PENDENCY OF COMMISSION ACTION.—Whenever a civil action has been instituted by or on behalf of the Commission for any violation of any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the Federal Trade Commission may not, during the pend-

ency of that action instituted by or on behalf of the Commission, institute a civil action under such law or regulation against any defendant named in the Commission complaint in such action for any violation alleged in the Commission complaint.

(D) ACTIONS BY FTC.—In the case of an enforcement action by the Commission under a Federal law or regulation described in subparagraph (A)—

(i) the Commission shall provide the Federal Trade Commission with notice as described in subparagraph (A);

(ii) the Federal Trade Commission shall have the right of intervention described in subparagraph (B); and

(iii) the limitation on initiating an action as described in subparagraph (C) shall apply to the Commission with respect to a pending Federal Trade Commission action.

(E) AGREEMENTS BETWEEN AGENCIES.—

(i) NEGOTIATIONS AUTHORIZED.—The Commission may negotiate an agreement with the Federal Trade Commission to establish procedures to ensure that the enforcement actions of the 2 agencies are appropriately coordinated.

(ii) SCOPE OF NEGOTIATED AGREEMENT.—The terms of any agreement negotiated pursuant to clause (i) may modify or supersede the provisions of subparagraphs (A), (B), and (C).

(3) COORDINATION WITH OTHER FEDERAL AGENCY.—

(A) REFERRAL.—Any Federal agency (other than the Federal Trade Commission) that is authorized to enforce a Federal law described in paragraph (1) may recommend in writing to the Commission that it initiate an enforcement proceeding to the extent the Commission is authorized by that Federal law or by this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Commission does not, before the end of the 120-day period beginning on the date on which the Commission receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the other agency referred to in subparagraph (A) may initiate an enforcement proceeding as permitted by that Federal law.

(4) INSTITUTIONS SUBJECT TO SPECIAL EXAMINATION AND ENFORCEMENT PROCEDURES.—This subsection shall not apply to institutions subject to section 123.

(f) PRESERVATION OF OTHER AUTHORITY.—

(1) ATTORNEY GENERAL.—No provision of this title shall be construed as affecting any authority of the Attorney General.

(2) SECRETARY OF THE TREASURY.— No provision of this title shall be construed as affecting any authority of the Secretary of the Treasury, including with respect to prescribing regulations, initiating enforcement proceedings, or taking other actions with respect to a person providing tax planning or tax preparation services.

(3) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

(g) EFFECT ON OTHER AUTHORITY.—No provision of this section or section 123 shall be construed as modifying or limiting the authority of any appropriate Federal banking agency or the Commission to interpret, or take enforcement action under, any law or regulation the interpretation or enforcement of which is committed to the banking agency or the Commission, which shall include, in the case of the Commission, this Act, the enumerated consumer laws, and the regulations prescribed under this Act or such laws.

(h) PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or other laws other than the enumerated consumer laws.

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

(a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SECTION.—

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

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

(B) any insured credit union with total assets of $1,500,000,000 or less.

(2) APPROPRIATE AGENCY.—For purposes of this title, the term "appropriate agency" means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency as such term is defined in section 3 of the Federal Deposit Insurance Act;

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

(b) EXAMINATIONS.—

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

(2) COMMISSION ROLE IN EXAMINATIONS.—

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

(B) The Commission may, at its discretion, include an examiner on any examination conducted under paragraph (1). The appropriate agency shall involve such Commission examiner in the entire examination process, including setting the scope of an examination, participating in the examination, and providing input on the examination report, matters requiring attention and examination ratings.

(c) ENFORCEMENT.—

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

(2) COORDINATION WITH APPROPRIATE AGENCY.—

(A) REFERRAL.—

(i) IN GENERAL.—The Commission may recommend in writing to the appropriate agency that the appropriate agency initiate an enforcement proceeding to the extent the appropriate agency is authorized by that Federal law or by this title.

(ii) EXPLANATION.—Any recommendation under clause (i) shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF AGENCY.—If the appropriate agency does not, before the end of the 120-day period beginning on the date on which the appropriate agency receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the Commission may initiate an enforcement proceeding as permitted by Federal law.

(d) ACTIONS ARISING OUT OF CONSUMER COMPLAINT SYSTEM.—Notwithstanding any provision of this section, if through the consumer complaint system administered by the Commission under section 115 (c) (3), the Commission has reasonable cause to believe that an institution referred to in subsection (a) demonstrates noncompliance with any provision of this title, the enumerated consumer laws, or any regulation prescribed by the Commission under this title or pursuant to the authorities transferred under subtitles F and H, the Commission may directly investigate such institution for such noncompliance and take any action permitted under subtitle E that the Commission deems appropriate.

(e) REMOVAL OF APPROPRIATE AGENCY FOR PARTICULAR INSTITUTION.—

(1) HEIGHTENED SUPERVISION.—The Commission—

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

(B) shall have an Commission examiner participate in the examination process under subsection (b) for at least 1 examination cycle.

(2) REMOVAL BY ORDER.—If, after the completion of at least 1 examination cycle following the provision of notice to an appropriate agency under paragraph (1), the Commission determines in writing that the appropriate agency has failed to adequately conduct consumer compliance examinations or bring appropriate enforcement actions against an institution referred to in subsection (a), the Commission may order the removal of the appropriate agency from its responsibilities under this section for such institution.

(3) COMMISSION AUTHORITY UPON REMOVAL.—Upon removal pursuant to paragraph (2), the Commission shall examine and enforce against such institution as if the institution were subject to section 122.

(4) EFFECTIVE DATE.—An order under paragraph (2) shall take effect 30 days after a determination by the Secretary of the Treasury pursuant to paragraphs (5) and (6).

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

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

(A) DETERMINATION.—The order issued pursuant to paragraph (2) shall be deemed affirmed unless the Secretary of the Treasury denies the determination of the Commission within 120 days of the issuance of the order pursuant to paragraph (2).

(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as prohibiting the Secretary of the Treasury from making a determination to either affirm or deny an order issued pursuant to paragraph (2) prior to the passage of the time period in subparagraph (A).

(7) REGULATIONS.—By the transfer date, the Secretary shall issue regulations that establish the standards the Commission shall apply in making a determination to remove an appropriate agency and the process, procedures, and standards for an appeal. Such standards shall require the Commission to consider at least the following in issuing an order removing an appropriate agency for an institution referred to in subsection (a)(1):

(A) Reports of examination of such institution.

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

(C) Consumer complaints issued against such institution.

(D) Actions taken by State attorneys general and private rights of action against such institution.

(f) POLICIES AND PROCEDURES.—Within 180 days after the designated transfer date, the Commission and the appropriate agency shall develop policies and procedures for implementing this section.

(g) ASSESSMENTS.—

(1) LIMITATION ON CERTAIN FEES.—The Commission shall not assess examination fees on an institution referred to in subsection (a).

(2) RULE OF CONSTRUCTION.—No provision of this section shall be construed as preventing the appropriate agency from assessing fees on an institution referred to in paragraph (1) to meet the appropriate agency's expenses for carrying out such examination and supervision responsibilities pursuant to this section.

SEC. 124. SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.

(a) EXAMINATIONS.—A Federal banking agency and the Commission shall, with respect to each insured depository institution, credit union, or other covered person supervised by the Federal banking agency and the Commission, respectively—

(1) coordinate the scheduling of examinations of the insured depository institution, and credit union, or other covered person;

(2) conduct simultaneous examinations of each insured depository institution, credit union or other covered person, unless such institution requests examinations to be conducted separately;

(3) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(4) prior to issuing a final report of examination or taking supervisory action, an agency shall take into consideration concerns, if any, raised in the comments made by the other agency.

(b) COORDINATION WITH STATE BANK SUPERVISORS.—The Commission shall pursue arrangements and agreements with State bank supervisors to coordinate examinations consistent with subsection (a).

(c) RESOLUTION OF CONFLICT IN SUPERVISION.—

(1) REQUEST OF DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—If the proposed material supervisory determinations of the Commission and a Federal banking agency are conflicting, an insured depository institution, credit union, or other covered person may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) LIMITATION.—A request of an insured depository institution, credit union, or other covered person shall not be used to appeal a supervisory rating or determination by the Commission or a Federal banking agency.

(2) JOINT STATEMENT.—The agencies receiving a request from an insured depository institution, credit union, or covered person under paragraph (1) shall provide a joint statement resolving the conflict under such subparagraph before the end of the 30-day period beginning on the date the agencies receive such request.

(d) APPEALS TO GOVERNING PANEL.—

(1) IN GENERAL.—If the agencies receiving a request from an insured depository institution, credit union, or covered person under subsection (c)(1) do not issue a joint statement under subsection (c)(2), or if either agency takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, the insured depository institution, credit union, or other covered person may institute an appeal to a governing panel under this subsection.

(2) TIMETABLE.—Any appeal under paragraph (1) with regard to a failure of agencies to issue a joint statement shall be filed before the end of the 30-day period beginning at the end of the 30-day period during which such joint statement was due under subsection (c)(2).

(e) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this section shall be composed of—

(1) 2 individuals—

(A) 1 of whom is a representative from the Commission;

(B) 1 of whom is a representative of the Federal banking agency which received the request to which the appeal relates; and

(C) neither of whom—

(i) have participated in the material supervisory determinations under appeal; and

(ii) report directly or indirectly to the individual who made the supervisory determinations under appeal; and

(2) 1 individual who is a representative from—

(A) the Federal banking agency that heads the Financial Institution Examination Council; or

(B) if the Financial Institutions Examination Council is headed by a Federal banking agency that is a party to the appeal, the Federal banking agency that is next scheduled to head the Financial Institutions Examination Council.

(f) CONDUCT OF APPEAL.—

(1) CONTENT OF FILING APPEAL.—The insured depository institution, credit union, or other covered person which institutes an appeal under subsection (d)(1) shall include in the filing of such appeal all the facts and legal arguments pertaining to the matter appealed.

(2) APPEARANCE.—The insured depository institution, credit union, or other covered person which institutes an appeal under this section may appear before the governing panel in person or by telephone, through counsel, employees, or representatives of, or for, such institution, credit union, or other covered person.

(3) REQUESTS FOR ADDITIONAL INFORMATION.— Any governing panel convened under this section may request the insured depository institution, credit union, or other covered person, the Commission, or the Federal banking agency to produce additional information relevant to the appeal.

(4) FINAL WRITTEN DETERMINATIONS .—Any governing panel convened under this section, by a majority vote of the members of the panel, shall provide a final determination, in writing, within 30 days of the filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, credit union, or other covered person may jointly agree.

(5) PUBLIC INFORMATION.—A redacted copy of any determination by a governing panel convened under this section shall be made public upon the issuance of such determination.

(g) PROHIBITION AGAINST RETALIATION.—The Commission and the Federal banking agencies shall prescribe regulations to provide safeguards from retaliation against any insured depository institution, credit union, or other covered person which institutes an appeal under this section, as well as against any officer or and employee of any such institution, credit union, or other person.

(h) MATERIAL SUPERVISORY DETERMINATION DEFINED.—For purposes of this section, the term "material supervisory determination"—

(1) includes any action relating to any supervision or examinations; and

(2) does not include—

(A) a determination by any Federal banking agency to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act or section 212 of the Federal Credit Union Act, as the case may be; or

(B) any regulation or guidance, or order of general applicability.

SEC. 125. LIMITATIONS ON AUTHORITY OF COMMISSION.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Commission may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or services, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended.

(2) EXCEPTION FOR EXISTING AUTHORITY.—The Commission may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any other agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant, retailer, or seller of nonfinancial services to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided exceeds the market value of the product or service provided, or

(ii) with respect to which the Commission finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

(b) EXCLUSION FOR PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State. The Commission shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Securities and Exchange Commission shall consult and coordinate with the Commission with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Commission under this title or under any other law.

(c) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Commission shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the

Commission with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Commission under this title or under any other law.

(d) EXCLUSION FOR PERSONS REGULATED BY THE FEDERAL HOUSING FINANCE AGENCY.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Federal Housing Finance Agency to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Federal Housing Finance Agency. The Commission shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Federal Housing Agency. For purposes of this subsection, the term "person regulated by the Federal Housing Finance Agency" means any Federal home loan bank, and any joint office of 1 or more Federal home loan banks.

(e) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Commission shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) PRESERVATION OF CERTAIN AUTHORITIES.—Nothing in this title shall be construed as limiting the authority of the Commission from exercising powers under this Act with respect to the provision by a covered person of a product or service, not otherwise subject to this Act, for or on behalf of a person regulated by a State insurance regulator, in connection with a financial activity.

(f) EXCLUSION FOR QUALIFIED RETIREMENT OR ELIGIBLE DEFERRED COMPENSATION PLANS AND ARRANGEMENTS.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to—

(A) any retirement or eligible deferred compensation plan or arrangement qualified under or meeting the requirements of section 401(a), 403(a), 403(b), 457(b), 408 or 408A of the Internal Revenue Code; or

(B) any educational savings arrangement under section 529 of such Code.

(2) LIMITATION ON AGENCY AUTHORITY.—

(A) IN GENERAL.—The Commission may not exercise any power to enforce this title with respect to services provided directly (or indirectly if the services relate to the operation of such plan or arrangement) to—

(i) any retirement or eligible deferred compensation plan or arrangement qualified under or meeting the requirements of section 401(a), 403(a), 403(b), 457(b), 408, or 408A of the Internal Revenue Code; or

(ii) any educational savings arrangement under section 529 of such Code.

(B) SERVICES DEFINED.—For purposes subparagraph (A), the term "services" shall include, for example, services for custody and investment of assets, administration, compliance, and participant assistance.

(g) EXCLUSION FOR ACCOUNTANTS, TAX PREPARERS, AND ATTORNEYS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Commission may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph when such person is performing or offering to perform customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a state board of accountancy or a federal authority, or other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided by the person separate and apart from such customary and usual accounting activities and are not of-

fered or provided to consumers who are not receiving such customary and usual accounting activities;

(B) any person other than a person described in subparagraph (A) that performs income tax preparation activities for consumers; or

(C) any individual who is providing legal advice or services for which a license to practice law is required under the law of the State in which the advice or services are provided and which are performed within the scope of an attorney-client relationship established by an agreement, but only to the extent of such legal advice or services.

(2) NO EXCLUSION WITH RESPECT TO REGISTRATION OF MOST ATTORNEYS.—Notwithstanding paragraph (1), this subsection shall not apply to any authority granted to the Commission under section 128 with respect to a licensed attorney, except to the extent a licensed attorney is solely providing legal services in connection with—

(A) the preparation and filing of a bankruptcy petition; or

(B) court proceedings to avoid a foreclosure.

(3) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to—

(A) any person described in paragraph (1)(A) to the extent such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is a financial activity described in any subparagraph of section 101(19);

(B) any person described in paragraph (1)(B) or (1)(C) to the extent such person is engaged in any activity which is a financial activity described in any subparagraph of section 101(19); or

(C) any person described in paragraph (1)(A), (1)(B) or (1)(C) that is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(h) EXCLUSION FOR REAL ESTATE LICENSEES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Commission may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is licensed or registered as a real estate broker, real estate agent, in accordance with State law, but only to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, 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);

(D) engages 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; or

(E) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), (C), or (D).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(i) EXCLUSION FOR AUTO DEALERS.—

(1) IN GENERAL.—The Commission may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over—

(A) a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both; or

(B) a person that—

(i) is controlled by, or is under common control with, one or more motor vehicle dealers; and

(ii) primarily engages in the extension of, or arranging for the extension of, retail credit or retail leases involving motor vehicles, where 90 percent of such extension, or arranging for such extension, is made with respect to customers of one or more motor vehicle dealers that control such person or with which such person is under common control.

(2) CERTAIN FUNCTIONS EXCEPTED.—The provisions of paragraph (1) shall not apply to any person to the extent that person—

(A) provides consumers with any services related to residential mortgages; or

(B) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(i) the extension of retail credit or retail leases is routinely provided directly to consumers; and

(ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third party finance or leasing source.

(3) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this subsection shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day prior to the enactment of this title.

(4) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding subtitle F or any other provision of law under this title, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Commission to the extent such functions are with respect to a person described under paragraph (1).

(5) DEFINITIONS.—For purposes of this subsection:

(A) MOTOR VEHICLE.—The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road.

(B) MOTOR VEHICLE DEALER.—The term "motor vehicle dealer" means any person resident in the United States or any territory of the United States, and licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

(j) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Commission to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(k) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Commission may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person to the extent such person—

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

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

(C) offers to engage in any activity described in subparagraphs (A) or (B).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) DEFINITIONS.—For purposes of this subsection:

(A) MANUFACTURED HOME.—The term "manufactured home" has the meaning given such term in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term "modular home" means a house built in a factory in two or more modules that meet the State or local building codes where the house will be located and where such modules are transported to the building site, installed on foundations, and completed.

SEC. 126. COLLECTION OF INFORMATION; CONFIDENTIALITY REGULATIONS.

(a) COLLECTION OF INFORMATION.—

(1) IN GENERAL.—In conducting research on the provision of consumer financial products or services, the Commission shall have the power to gather information from time to time regarding the organization, business conduct, and practices of covered persons or service providers.

(2) SPECIFIC AUTHORITY.—In order to gather such information, the Commission shall have the power—

(A) to gather and compile information;

(B) to require persons to file with the Commission, in such form and within such reasonable period of time as the Commission may prescribe, by regulation or order, annual or special reports, or answers in writing to specific questions, furnishing information the Commission may require; and

(C) to make public such information obtained by it under this section as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(b) CONFIDENTIALITY REGULATIONS.—The Commission shall prescribe regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of any authority of the Commission under this title and the enumerated consumer laws and the authorities transferred under subtitles F and H.

(c) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Commission, or requiring covered persons to publicly report information, the Commission shall take steps to ensure that proprietary, personal or confidential consumer information that are protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law are not made public under this title.

SEC. 127. MONITORING; ASSESSMENTS OF SIGNIFICANT REGULATIONS; REPORTS.

(a) MONITORING.—

(1) IN GENERAL.—The Commission shall monitor for risks to consumers in the provision of consumer financial products or services, including developments in markets for such products or services.

(2) MEANS OF MONITORING.—Such monitoring may be conducted by examinations of covered persons or service providers, analysis of reports obtained from covered persons or service providers, assessment of consumer complaints, surveys and interviews of covered persons, service providers, and consumers, and review of available databases.

(3) CONSIDERATIONS.—In allocating the resources of the Commission to perform the monitoring required by this section, the Commission may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) consumers' understanding of the risks of a type of consumer financial product or service;

(C) the state of the law that applies to the provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the provision of a consumer financial product or service;

(E) extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers, if any; or

(F) types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) REPORTS.—The Commission shall publish at least 1 report of significant findings of the monitoring required by paragraph (1) in each calendar year, beginning in the calendar year that is 1 year after the designated transfer date.

(b) ASSESSMENT OF SIGNIFICANT REGULATIONS.—

(1) IN GENERAL.—The Commission shall conduct an assessment of each significant regulation prescribed or order issued by the Commission under this title, under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law that addresses, among other relevant factors, the effectiveness of the regulation in meeting the purposes and objectives of this Act and the specific goals stated by the Commission.

(2) BASIS FOR ASSESSMENT.—The assessment shall reflect available evidence and any data that the Commission reasonably may collect.

(3) REPORTS.—The Commission shall publish a report of an assessment under this subsection not later than 3 years after the effective date of the regulation or order, unless the Commission determines that 3 years is not sufficient time to study or review the impact of the regulation, but in no event shall the Commission publish a report of such assessment more than 5 years after the effective date of the regulation or order.

(4) PUBLIC COMMENTED REQUIRED.—Before publishing a report of its assessment, the Commission shall invite, with sufficient time allotted, public comment on, and may hold public hearings on, recommendations for modifying, expanding, or eliminating the newly adopted significant regulation or order.

(c) INFORMATION GATHERING.—In conducting any monitoring or assessment required by this section, the Commission may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

SEC. 128. AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.

(a) IN GENERAL.—The Commission, by regulation, may prohibit or impose conditions or limitations on the use of any agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties if the Commission finds that such a prohibition or imposition of conditions or limitations are in the public interest and for the protection of consumers.

(b) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Commission under subsection (a) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Commission.

SEC. 129. REGISTRATION AND SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) RISK-BASED PROGRAMS.—

(1) IN GENERAL.—The Commission shall develop risk-based programs to supervise covered persons that are not credit unions, depository institutions, or persons excluded under section 125 by prescribing registration requirements, reporting requirements, and examination standards and procedures.

(2) BASIS FOR PROGRAMS.—The risk-based supervisory programs established pursuant to paragraph (1) shall be based on—

(A) relevant registration and reporting information about such covered persons, as determined by the Commission; and

(B) the Commission's assessment of risks posed to consumers in the relevant geographic markets and markets for consumer financial products and services.

(b) REGISTRATION.—

(1) IN GENERAL.—The Commission shall prescribe regulations regarding registration requirements for covered persons that are not credit unions or depository institutions.

(2) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this subsection, the Commission shall consult with State agencies regarding requirements or systems for registration (including coordinated or combined systems), where appropriate.

(3) EXCEPTION FOR RELATED PERSONS.—The Commission shall not impose requirements regarding the registration of a related person.

(4) REGISTRATION INFORMATION.—The Commission shall publicly disclose the registration information about a covered person which is not a bank holding company, credit union, or depository institution for the purposes of facilitating the ability of consumers to identify the covered person as registered with the Commission.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The Commission may require reports from covered persons that are not credit unions or depository institutions, or service providers thereto, for the purposes of facilitating supervision of such covered persons or service providers.

(2) CONSISTENCY OF REPORTING REQUIREMENTS AND RISK-BASED STANDARDS.—The Commission shall impose reporting requirements under this subsection that are consistent with the risk-based standards developed and implemented under this section and the registration information pertaining to the relevant types or classes of covered persons.

(3) CONTENTS OF REPORTS.—Reporting requirements imposed under this paragraph may include information regarding—

(A) the nature of the covered person's business;

(B) the covered person's name, legal form, ownership and management structure, and related persons;

(C) the covered person's locations of operation;

(D) the covered person's types and number of consumer financial products and services provided by the covered person;

(E) compliance with any requirement imposed or enforced by the Commission, including any requirement relating to registration, licensing, fees, or assessments; and

(F) the financial condition of such covered person, including a related person, for the purpose of assessing the ability of such person to perform its obligation to consumers.

(4) CONSULTATION WITH THE FEDERAL TRADE COMMISSION.—In developing and implementing report requirements under this subsection, the Commission shall consult with the Federal Trade Commission, where appropriate.

(5) EXCEPTION FOR RELATED PERSONS.—Other than reports permitted under paragraph (3)(F) or in connection with a supervisory action or examination or pursuant to the powers granted in subtitle E, the Commission shall not impose requirements regarding reports of any related person.

(d) EXAMINATIONS.—

(1) EXAMINATIONS REQUIRED.—The Commission shall conduct examinations of covered persons that are not credit unions or depository institutions as part of the programs implemented under paragraphs (2) and (3) of section 122(c).

(2) EXAMINATION STANDARDS AND PROCEDURES.—The Commission shall establish risk-based standards and procedures for conducting examinations of covered persons required to be examined under paragraph (1), including the frequency and scope of such examinations, except that the Commission shall conduct examinations of such covered persons that are determined to pose the highest risk to consumers based on factors determined by the Commission, such as the operations, sales practices, or consumer financial products or services provided by such covered persons.

(e) AUTHORITY TO COLLECT INFORMATION REGARDING FEES OR ASSESSMENTS.—To the extent permitted by Federal law, the Commission may obtain from the Secretary of the Treasury information relating to a covered person which is not a bank holding company, credit union, or depository institution, including information regarding compliance with a reporting or registration requirement under the subchapter II of chapter 53 of title 31, United States Code, for the purposes of, and only to the extent necessary in, investigating, determining, or enforcing compliance with a requirement relating to any fee or assessment imposed by the Commission under this title.

SEC. 130. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle C—Specific Authorities

SEC. 131. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Commission may take any action authorized under subtitle E to prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) REGULATIONS.—

(1) IN GENERAL.—The Commission may prescribe regulations identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service or the offering of a consumer financial product or service.

(2) INCLUDES PREVENTION MEASURES.—Regulations prescribed under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Commission shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair unless the Commission has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) ESTABLISHED PUBLIC POLICY AS FACTOR.—In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence.

(d) CONSULTATION.—In prescribing any regulation under this section, the Commission shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

SEC. 132. DISCLOSURES.

(a) IN GENERAL.—The Commission may prescribe regulations to ensure the timely, appropriate and effective disclosure to consumers of the costs, benefits, and risks associated with any consumer financial product or service.

(b) COORDINATION WITH OTHER LAWS.—In prescribing regulations under subsection (a), the Commission shall take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden.

(c) COMPLIANCE.—

(1) MODEL DISCLOSURES.—The Commission may provide model disclosures to facilitate compliance with the requirements of regulations prescribed under this section.

(2) PER SE COMPLIANCE.—Compliance by a covered person with the model disclosures issued by the Commission under this subsection shall per se constitute compliance with the disclosure requirements of this section.

(3) ADDITIONAL GUIDANCE.—The Commission may issue exemptions, no action letters, and other guidance to promote compliance with disclosures requirements of regulations prescribed under this section.

(d) COMBINED MORTGAGE LOAN DISCLOSURE.—Within 1 year after the designated transfer date, the Commission shall propose for public comment regulations and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Commission determines that any proposal issued by the Board of Governors and the Department of Housing and Urban Development carries out the same purpose.

SEC. 133. SALES PRACTICES.

The Commission may prescribe regulations and issue orders and guidance regarding the manner, settings, and circumstances for the provision of any consumer financial products or services to ensure that the risks, costs, and benefits of the products or services, both initially and over the term of the products or services, are fully and accurately represented to consumers.

SEC. 134. PILOT DISCLOSURES.

(a) PILOT DISCLOSURES.—The Commission shall establish standards and procedures for approval of pilot disclosures to be provided or made available by a covered person to consumers in connection with the provision of a consumer financial product or service, or the offering of a consumer financial product or service.

(b) STANDARDS.—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) TRANSPARENCY.—The procedures shall provide for public disclosure of pilots, but the Commission may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

SEC. 135. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of ability to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; or

(5) procedures and operations relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) COMMISSION AUTHORITY TO PRESCRIBE STANDARDS.—

(1) IN GENERAL.—The Commission may prescribe regulations establishing minimum standards under this section for any class of covered persons other than covered persons which are subject to the jurisdiction of a Federal banking agency or a State bank supervisor , or for any service provider.

(2) REGISTRATION AND LICENSING STANDARDS.—In addition to prescribing standards for the purposes described in subsection (a), the Commission may prescribe registration or licensing standards applicable to covered persons for the purposes of imposing fees or assessments in accordance with this title.

(3) ENFORCEMENT OF STANDARDS.— The Commission may enforce under subtitle E compliance with standards adopted by the Commission or a State pursuant to this section for covered persons or service providers operating in that State.

(c) CONSULTATION.—In prescribing minimum standards under this section, the Commission shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

SEC. 136. DUTIES.

(a) IN GENERAL.—

(1) REGULATIONS ENSURING FAIR DEALING WITH CONSUMERS.—The Commission shall prescribe regulations imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the Commission deems appropriate or necessary to ensure fair dealing with consumers.

(2) CONSIDERATIONS FOR DUTIES.—In prescribing such regulations, the Commission shall consider whether—

(A) the covered person, employee, agent, or independent contractor represents implicitly or explicitly that the person, employee, agent, or contractor is acting in the interest of the consumer with respect to any aspect of the transaction;

(B) the covered person, employee, agent, or independent contractor provides the consumer with advice with respect to any aspect of the transaction;

(C) the consumer's reliance on or use of any advice from the covered person, employee, agent, or independent contractor would be reasonable and justifiable under the circumstances;

(D) the benefits to consumers of imposing a particular duty would outweigh the costs; and

(E) any other factors as the Commission considers appropriate.

(3) DUTIES RELATING TO COMPENSATION PRACTICES.—

(A) IN GENERAL.—The Commission may prescribe regulations establishing duties regarding compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers.

(B) NO COMPENSATION CAPS.—The Commission may not prescribe a limit on the total dollar amount of compensation paid to any person.

(C) DISPARITY TREATMENT PROHIBITED.—The Commission may not prescribe regulations that directly or indirectly disparately treat, or are interpreted to disparately treat, or disparately impact any entity that employs covered persons.

(4) REQUIREMENT TO INCLUDE DISCLAIMER ON PUBLIC STATEMENTS.—The Commission shall ensure that its website, and any statement made by the Commission to the public, includes a disclaimer stating that the Commission does not endorse any particular financial product or service and consumers are expected to exercise due diligence in deciding what financial products and services are appropriate for them.

(b) ADMINISTRATIVE PROCEEDINGS.—

(1) IN GENERAL.—Any regulation prescribed by the Commission under this section shall be enforceable only by the Commission through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding as permitted under State law.

(2) EXCLUSIVITY OF REMEDY.—No action may be commenced in any court to enforce any requirement of a regulation prescribed under this section, and no court may exercise supplemental jurisdiction over a claim asserted under a regulation prescribed under this section based on allegations or evidence of conduct that otherwise may be subject to such regulation.

(3) RULE OF CONSTRUCTION.—The Commission, the Attorney General, and any State attorney general or State regulator shall not be precluded from enforcing any other Federal or State law against a person with respect to conduct that may be subject to a regulation prescribed by the Commission under this section.

(c) EXCLUSIONS.—This section shall not be construed as authorizing the Commission to prescribe regulations applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

SEC. 137. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to regulations prescribed by the Commission, a covered person shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.

(b) EXCEPTIONS.—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law (including section 6103 of the Internal Revenue Code of 1986); or

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

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

(d) STANDARDIZED FORMATS FOR DATA.—The Commission, by regulation, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) CONSULTATION.—The Commission shall, when prescribing any regulation under this section, consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Commissioner of Internal Revenue to ensure that the regulations—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 138. PROHIBITED ACTS.

It shall be unlawful for any person—

(1) to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee, or charge in connection with a consumer financial product or service that is not in conformity with this title or applicable regulation prescribed or order issued by the Commission or to engage in any unfair, deceptive, or abusive act or practice, except that no person shall be held to have violated this subsection solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse to pay any fee or assessment imposed by the Commission under this title, to fail or refuse to permit access to or copying of records, to fail or refuse to establish or maintain records, or to fail or refuse to make reports or provide information to the Commission, as required by this title, an enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any regulation prescribed or order issued by the Commission this title or pursuant to any such authority; or

(3) to knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 131, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

Nothing in this section shall be construed to modify or otherwise affect section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)).

SEC. 139. TREATMENT OF REMITTANCE TRANSFERS.

(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

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

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

(A) disclose clearly and conspicuously, in writing and in a form that the consumer may keep, to each consumer who requests information regarding the fees or exchange rate for a remittance transfer, prior to the consumer making any payment in connection with the transfer—

(i) the total amount in United States dollars that will be required to be paid by the consumer in connection with the remittance transfer;

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

(iii) the fee charged by the remittance transfer provider for the remittance transfer;

(iv) any exchange rate to be used by the remittance transfer provider for the remittance transfer, unless the exchange rate is not fixed on send;

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

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

(vii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(B) at the time at which the consumer makes payment in connection with the remittance transfer, a receipt in writing disclosing clearly and conspicuously—

(i) the information described in subparagraph (A);

(ii) the expected time interval within which the funds being transferred will be made available to the recipient, which shall be not more than ten days after the date the consumer makes payment in connection with the remittance transfer unless otherwise prohibited by applicable State or Federal law or the law of another country, or as may be specified by the consumer so long as the consumer has the choice to order that the funds be made available to the recipient not more than ten days after the consumer makes payment in connection with the remittance transfer;

(iii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(iv) the name and telephone number or address of the designated recipient, if provided to the remittance transfer provider by the consumer;

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

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

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

(viii) information as to when the exchange rate will be calculated (for example, when the funds are received by the recipient), if the customer has been notified that the exchange rate is not fixed on send;

(C) at the time at which the consumer initiates the remittance transfer, offer to provide in writing, prior to making any payment in connection with the transfer, the information listed in subparagraph (A); and

(D) in the case of an exchange rate not fixed on send, the remittance provider shall also disclose, at the time at which the consumer initiates the remittance transfer, the range, using the high and low rates, for the prior 30 day period, that the consumer would have received if a representative amount had been exchanged by the remittance transfer provider, as well as a clear and conspicuous notice that the actual exchange rate may vary.

If the actual rate used for the transfer is known to the remittance provider, either because such rate was set by the remittance provider itself or because the remittance provider receives confirmation of the actual exchange rate used, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient or the remittance transfer received, using the values of the currency into which the funds were exchanged. The Commission shall within 2 years after the date of the enactment of the Consumer Financial Protection Commission Act of 2009 prescribe consumer disclosures for transfers with rates not fixed on send that are functionally equivalent to those applicable to remittances where the exchange rate is specified by the remittance transfer provider at the time the consumer initiates the remittance transfer. To the greatest extent possible, the Commission shall ensure that functional equivalence will enable remittance transfer providers to comply with all requirements in this Act and provide consumers with information sufficient to compare services providers, to time their use of the product, to discover errors in transmission and to seek remedies.

(3) EXEMPTION.—Notwithstanding requirements under paragraph 2(A)(ii) or 2(A)(iv) or 2(B)(i), no such disclosure is required—

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

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

(C) because of any other circumstance deemed permissible by regulation of the Commission; If the actual rate used for the transfer is known to the remittance provider, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged.

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

(A) In addition to providing the disclosures required by this section to a consumer at a remittance transfer provider location, a remittance transfer provider shall provide a toll-free telephone number or local number, and an Internet website that a consumer can access for which access no remittance transfer provider may assess a charge, to obtain the information required by paragraph (2)(A) for remittance transfers offered by that remittance transfer provider or information about the status of a remittance transfer for which a consumer has made payment.

(B) A remittance transfer provider that on an aggregate basis originates 30,000 or fewer transfers on a calendar year basis (or such other amount as may be prescribed by the Commission) is not required to offer the web access prescribed in subparagraph (A), but is required to provide a toll-free telephone number or local number as prescribed in subparagraph (A).

(5) ALTERNATIVE METHODS OF DISCLOSURE.—Subject to subsection (e)(2), a remittance transfer provider may—

(A) if the transaction is conducted entirely by telephone (which shall include, but not be limited to, a mobile telephone) satisfy the requirements of paragraph (2)(A) orally or, at the option of the consumer, electronically through a message sent to the consumer through any electronic means (including, but not limited to, an electronic mail address or a mobile telephone) as designated by the consumer;

(B) satisfy the requirements of paragraph (2)(A) electronically if the transfer is initiated by the consumer electronically through the remittance transfer provider's website or through any other electronic means; and

(C) satisfy the requirements of paragraph (2)(B) by mailing (or transmitting electronically if the transfer is initiated electronically by the consumer through the remittance transfer provider's website or the consumer otherwise consents in accordance with the provisions of section 101 of the Electronic Signatures in Global and National Commerce Act) the information required under such paragraph to the consumer not later than one business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone (or electronically) and the consumer requests a written receipt.

(b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

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

(A) at each remittance transfer provider location, shall be made in the same languages principally used by the remittance transfer provider, or any

of its agents, to advertise, solicit, or market its remittance transfers business, either orally or in writing, at that location, if other than English, provided that such languages are those for which the Commission has issued model disclosures as provided in subsection (g); or

(B) on a remittance transfer provider's website, shall at a minimum be made in any other language for which the Commission has issued model disclosures as provided in subsection (g) if the remittance transfer provider, or any of its agents, advertises, solicits, or markets its remittance transfers business in such language.

(2) DISPUTES CONCERNING TERMS.—If a disclosure is required by this section to be in English and another language, the English version of the disclosure shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the remittance transfer provider or its agent and the remittance transfer provider or its agent shall be liable for any damages caused by these discrepancies.

(c) REMITTANCE TRANSFER CANCELLATIONS, REFUNDS, AND ERRORS.—

(1) CANCELLATIONS.—

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

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

(ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

(B) If a consumer cancels the transaction, the remittance transfer provider shall immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction has been cancelled.

(C) A consumer may not cancel a remittance transfer after the remittance transfer provider has sent the funds to the recipient.

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

(2) REFUNDS.—

(A) If a remittance transfer provider receives written notice from the consumer within ten days of the promised date of delivery of a remittance transfer that no amount of the funds to be remitted was made available to the designated recipient in the foreign country, the remittance transfer provider shall—

(i) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with such remittance transfer;

(ii) promptly transmit the remittance transfer in accordance with the terms in the written receipt provided to the consumer pursuant to subsection (a)(2)(B);

(iii) provide such other remedy, as determined appropriate by rule of the Commission for the protection of consumers; or

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

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

(3) ERROR RESOLUTION.—

(A) IN GENERAL.—If a remittance transfer provider receives written notice from the consumer within 60 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this paragraph.

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

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

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

(II) make available to the designated recipient, without additional cost to the designated recipient or to the consumer, the amount appropriate to resolve the error;

(III) provide such other remedy, as determined appropriate by regulation of the Commission for the protection of consumers; or

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

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

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

(e) APPLICABILITY OF OTHER PROVISIONS OF LAW.—

(1) APPLICABILITY OF TITLE 18 AND TITLE 31 PROVISIONS.—A remittance transfer provider that is a money transmitting business as defined in section 5330 of title 31, United States Code, may provide remittance transfers only if such provider is in compliance with the requirements of section 5330 of title 31, United States Code, and section 1960 of title 18, United States Code, as applicable.

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

(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act, or chapter 2 of title I of Public Law 91–508, or any regulations promulgated thereunder; or

(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (2) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulation prescribed under such subparagraph.

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

(1) DEPOSITORY INSTITUTION.—the term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes a credit union.

(2) NOT FIXED ON SEND.—The term "not fixed on send" when referring to an exchange rate used in a remittance transfer means an exchange rate that is not set by the remittance transfer provider at the time the consumer initiates the remittance transfer.

(3) REMITTANCE TRANSFER.—The term "remittance transfer" means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act) transfer of funds at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903 of the Electronic Fund Transfer Act.

(4) REMITTANCE TRANSFER PROVIDER.—The term "remittance transfer provider" means any person or depository institution, or agent thereof, that originates remittance transfers on behalf of consumers in the normal course of its business, whether or not the consumer is an account holder of that person or depository institution.

(g) MODEL DISCLOSURES.—

(1) PUBLICATION.—Notwithstanding any provisions of this title, the Commission shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this section and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) LANGUAGES TO BE USED IN MODEL DISCLOSURES.—The Commission shall make these disclosures available within one year of the effective date of this Act—

(A) in English, and

(B) the ten most frequently spoken languages in the United States, other than English, used by consumers initiating remittance transfers, as may be determined by the Commission.

(3) USE OF AUTOMATED EQUIPMENT.—In establishing model forms under this subsection, the Commission shall consider the use by lessors of data processing or similar automated equipment.

(4) USE OPTIONAL.—A remittance transfer provider may utilize a model disclosure form established by the Commission under this subsection for purposes of compliance with this section, at the discretion of the remittance transfer provider.

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

(h) REGULATION AND EXEMPTION AUTHORITY.—Notwithstanding any other provisions of this title, the Commission, in consultation with relevant Federal and State government agencies may by regulation exempt from one or more requirements of this section, any category of remittance transfer provider if the Commission determines that under applicable Federal or State law that such category of remittance transfer provider is subject to requirements substantially similar to those imposed under this section or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(i) APPLICABILITY OF STATE LAW.—

(1) This section does not annul, alter, affect, or exempt any person subject to the provisions of this section from complying with other applicable Federal law and the laws of any State relating to remittance transfers and remittance transfer providers, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

(2) Notwithstanding any other provisions of this title, the Commission may determine whether such inconsistencies exist. A State law is not inconsistent with this section if the protection such law affords any consumer is greater than the protection afforded by this section. If the Commission determines that a State requirement is inconsistent, remittance transfer providers shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This section does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(3) This section does not annul, alter, or affect the laws of any State relating to the licensing or registration, supervision or examination of remittance transfer providers.

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

(j) FEDERAL CREDIT UNION ACT AMENDMENT.—Paragraph (12)(A) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)(A)) is amended by inserting "and remittance transfers, as defined in section 139 of the Consumer Financial Protection Commission Act of 2009" after "and domestic electronic fund transfers".

(k) AUTOMATED CLEARINGHOUSE SYSTEM.—

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

(A) the volume and dollar amount of remittance transfers to those countries;

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

(C) the feasibility of such an expansion.

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

(l) REGULATORY GUIDANCE ON REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—The Commission shall provide guidelines to all remittance transfer providers regarding—

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

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

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

(D) specific options that allow remittance transfer providers to take advantage of automated clearing systems, including the FedACH International Services offered by the Board of Governors of the Federal Reserve System and the Federal reserve banks, to transmit remittances at low cost.

(2) CONTENT OF GUIDELINES.—Guidelines provided to remittance transfer providers under this section shall include—

(A) information as to the methods of providing remittance transfer services;

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

(C) the potential value to depository institutions of broadening their financial bases to include persons that use remittance transfers.

(3) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—The Secretary of the Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improving the financial literacy and education of consumers who send remittances.

(m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of the enactment of this Act, the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which a consumer's remittance history could be used to enhance a consumer's credit score;

(2) the current legal and business model barriers and impediments that impede the use of a consumer's remittance history to enhance the consumer's credit score; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this Act may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in sections 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by subsection (a)).

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

SEC. 140. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

SEC. 140A. NO AUTHORITY TO REQUIRE THE OFFERING OF FINANCIAL PRODUCTS OR SERVICES.

The Commission may not prescribe any regulation, issue any order or guidance, or take any other action, including any enforcement action, the effect of which would be to require a covered person to offer to any consumer a specific financial product or service.

SEC. 140B. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Commission shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this Act.

(b) CERTAIN REGULATION REQUIREMENTS.—Regulations promulgated by the Negotiated Rulemaking Committee under this section shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(1) licensed or registered in accordance with section 1501 et seq. of the SAFE Mortgage Licensing Act of 2008; and

(2) subject to State or Federal laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(A) consider additional, appropriate property information;

(B) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report.

(c) SUNSET.—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

Subtitle D—Preservation of State Law

SEC. 141. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title shall not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the laws, regulations, orders, or interpretations, in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this title and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Commission on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

SEC. 142. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Any State attorney general may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States or State court having jurisdiction of the defendant, to secure monetary or equitable relief for violation of any provisions of this title or regulations issued thereunder.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any regulation prescribed by the Commission under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Commission, or the Commission's designee.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Commission immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this section shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Commission or another Federal agency.

(2) COMMISSION RESPONSE.—In any action described in paragraph (1), the Commission may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Commission shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 143. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, and established by the Commission, shall not be construed to alter or affect the applicability of any regulation, order, guidance or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 144. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et 1 seq.) is amended by inserting after section 5136B the following new section:

"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 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 meaning as in section 3 of the Federal Deposit Insurance Act.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—National banks shall generally comply with State laws. State laws are preempted only if—

"(A) application of a state 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) the Comptroller of the Currency determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as national bank to engage in the business of banking; or

"(C) the State law is preempted by Federal law other than this Act.

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any national bank subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

"(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted

by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

"(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Comptroller of the Currency regarding the meaning or interpretation of the National Bank Act or other Federal laws.

"(c) SUBSTANTIAL EVIDENCE.—No regulation 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 that the provision prevents or significantly interferes with the national bank's exercise of a power explicitly granted by the Congress.

"(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe regulation pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Consumer Financial Protection Commission, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

"(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—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 inspecting the comments made on, the determination, the agency shall timely propose to continue, amend or rescind it, as may be appropriate, in accordance with the procedures set forth in subsections (a) and (b) of section 5244 (12 U.S.C. 43(a)-(b)).

"(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of 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.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

"Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.".

SEC. 145. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United States (as added by section 144) is amended by adding at the end the following new subsections:

"(h) VISITORIAL POWERS.—

"(1) RULE OF CONSTRUCTION.—No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory 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 any action in any court of appropriate jurisdiction—

"(A) to require a national bank to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

"(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the head of the agency responsible for chartering and regulating national banks before acting under paragraph (1).

"(i) ENFORCEMENT ACTIONS.—The ability of the head of the agency responsible for chartering and regulating national banks to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.".

SEC. 146. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States is amended by inserting after subsection (i) (as added by section 145) the following new subsection:

"(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

"(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

"(2) IN GENERAL.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.".

SEC. 147. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

"(a) STATE CONSUMER FINANCIAL LAW DEFINED.—For purposes of this section, the term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against Federal savings associations and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for Federal savings associations to engage in), or any account related thereto, with respect to a consumer.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—Federal savings associations shall generally comply with State laws. State laws are preempted only if—

"(A) application of a state law would have a discriminatory effect on Federal savings associations in comparison with the effect of the law on a bank chartered by that State;

"(B) the Director of the Office of Thrift Supervision determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as a Federal savings associations to engage in the business of banking; or

"(C) the State law is preempted by Federal law other than this Act.

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any Federal savings associations subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

"(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

"(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Director of the Office of Thrift Supervision regarding the meaning or interpretation of the National Bank Act or other Federal laws.

"(c) OTHER FEDERAL LAW.—Notwithstanding any other provision of law, the Director of the Office of Thrift Supervision may not prescribe any regulation pursuant to subsection (b)(1)(B) until such Director, after consultation with the Consumer Financial Protection Commission, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a Federal savings association, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

"(d) SUBSTANTIAL EVIDENCE.—No regulation prescribed by the Director of the Office of Thrift Supervision issued under subsection (b)(1)(B) shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a Federal savings association, the provision of the State consumer financial law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents or significantly interferes with the Federal savings association's exercise of a power explicitly granted by the Congress.

"(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—The Director of the Office of Thrift Supervision 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 inspecting the comments made on, the determination, the agency shall timely propose to continue, amend or rescind it, as may be appropriate, in accordance 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)).

"(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this Act, a State consumer financial law shall apply to a subsidiary or affiliate of a Federal savings association to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law and consistent with Federal law.".

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

"Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.".

SEC. 148. VISITORIAL STANDARDS.

Section 6 of the Home Owners' Loan Act (as added by section 147 of this title) is amended by adding at the end the following new subsections:

"(h) VISITORIAL POWERS.—

"(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

"(A) to require a Federal savings association to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any Federal savings association.

"(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Director or any successor agency before acting under paragraph (1).

"(i) ENFORCEMENT ACTIONS.—The ability of the Director or any successor officer or agency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.".

SEC. 149. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners' Loan Act is amended by adding after subsection (i) (as added by section 148) the following new subsection:

"(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

"(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

"(2) IN GENERAL.—No provision of this title shall be construed as preempting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.".

SEC. 150. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 151. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms "civil investigative demand" and "demand" mean any demand issued by the Commission.

(2) COMMISSION INVESTIGATION.—The term "Commission investigation" means any inquiry conducted by an Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Commission under this title or under the authorities transferred under subtitles F and H.

(3) COMMISSION INVESTIGATOR.—The term "Commission investigator" means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any regulation prescribed or order issued under this title or pursuant to any such authority by the Commission.

(4) CUSTODIAN.—The term "custodian" means the custodian or any deputy custodian designated by the Commission.

(5) DOCUMENTARY MATERIAL.—The term "documentary material" includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term "violation" means any act or omission that, if proved, would constitute a violation of any provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or of any regulation prescribed or order issued by the Commission under this title or pursuant to any such authority.

SEC. 152. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Commission or, where appropriate, an Commission representative may engage in joint investigations and requests for information.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations and requests for information with the Secretary of Housing and Urban Development, the Attorney General, or both."

(b) SUBPOENAS.—

(1) IN GENERAL.—The Commission or a Commission investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Commission or a Commission investigator and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

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

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Commission may, before the institution of any proceedings under this title or under any enumerated consumer law or pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Commission;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

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

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

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

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

(C) identify the custodian to whom such things shall be submitted.

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

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—

(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

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

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(9) PROOF OF SERVICE.—

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

(B) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) PROCEDURE.—

(i) OATH AND RECORDATION.—Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the investigator, record the testimony of the witness.

(ii) TRANSCRIPTIONS.—The testimony shall be taken stenographically and transcribed.

(iii) COPY TO CUSTODIAN.—After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, the attorney for such person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Commission is engaged in a joint investigation, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(iv) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise ob-

ject to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person's attorney.

(v) PETITION FOR ORDER.—If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(vi) BASIS FOR COMPELLING TESTIMONY.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—

(i) RIGHT TO EXAMINE.—After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(ii) READING THE TRANSCRIPT.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(iii) REQUEST FOR CHANGES.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Commission investigator with a statement of the reasons given by the witness for making such changes.

(iv) SIGNATURE.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(v) COMMISSION ACTION IN LIEU OF SIGNATURE.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The Commission investigator shall certify on the transcript that the witness was duly sworn by the investigator and that the transcript is a true record of the testimony given by the witness, and the Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Commission may for good cause limit such witness to inspection of the official transcript of the testimony of such witness.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the Commission.

(2) DISCLOSURE TO CONGRESS.—No regulation established by the Commission regarding the confidentiality of materials submitted to, or otherwise obtained by, the Commission shall be intended to prevent disclosure to either House of the Congress or to an appropriate committee of the Congress, except that the Commission may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the Commission and has designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as the Commission may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

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

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the Commission.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

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

SEC. 153. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Commission may conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any regulations prescribed by the Commission under this title; and

(2) any other Federal law that the Commission is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Commission from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) NOTICE OF CHARGES.—If, in the opinion of the Commission, any covered person or service provider is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the Commission, the Commission may issue and serve upon the person a notice of charges with respect to such violation.

(B) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(C) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Commission at the request of any party so served.

(D) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—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.

(E) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Commission shall find that any violation specified in the notice of charges has been established, the Commission may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(F) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect 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 Commission or a reviewing court.

(3) DECISION AND APPEAL.—

(A) PLACE OF AND PROCEDURES FOR HEARING.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(B) TIME LIMIT FOR DECISION.—After such hearing, and within 90 days after the Commission has notified the parties that the case has been submitted to it for final decision, the Commission shall—

(i) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(ii) 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.

(C) MODIFICATION OF ORDER GENERALLY.—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (4), and thereafter until the record in the proceeding has been filed as so provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(D) MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.—Upon such filing of the record, the Commission may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—

(A) IN GENERAL.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Commission be modified, terminated, or set aside.

(B) TRANSMITTAL OF COPY TO THE COMMISSION.—A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code.

(C) JURISDICTION OF COURT.—Upon the filing of a petition under subparagraph (A), such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Commission.

(D) SCOPE OF REVIEW.—Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code.

(E) FINALITY.—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.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Commission.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) IN GENERAL.—Whenever the Commission determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation of such violation, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Commission may issue a temporary order requiring the person to cease-and-desist from any such violation or

practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(B) OTHER REQUIREMENTS.—Any temporary order issued under this paragraph may include any requirement authorized under this subtitle.

(C) EFFECT DATE OF ORDER.—Any temporary order issued under this paragraph shall take effect upon service upon the person 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 Commission shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the person 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 person under subsection (b), 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) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the Commission is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Commission 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 take effect 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) in connection with the notice of charges; or

(II) the date the Commission determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Commission may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

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

(e) REGULATIONS.—The Commission shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

SEC. 154. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Commission under this title or pursuant to any such authority, the Commission may commence a civil action against such person to impose a civil penalty and to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Commission may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the Commission is a party.

(c) COMPROMISE OF ACTIONS.—The Commission may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation thereunder, the Commission shall notify the Attorney General.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Commission may represent itself in its own name before the Supreme Court of the United States, if—

(1) the Commission makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari; and

(2) the Attorney General concurs with such request or fails to take action within 60 days of the Commission's request.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Commission under this title or pursuant to any such authority.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of the discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) For purposes of this section, an action arising under this title shall not include claims arising solely under enumerated consumer laws.

(B) In any action arising solely under an enumerated consumer law, the Commission may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(C) In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the Commission may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

SEC. 155. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or Commission, as the case may be) in an action or adjudication proceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H, including a violation of a regulation prescribed or order issued under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

(2) RELIEF.—Such relief may include—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties under subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Commission, a State attorney general, or a State bank supervisor to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any regulation prescribed or order issued by the Commission under this title or pursuant to any such authority, the Commission, State attorney general, or State bank supervisor may recover the costs incurred by such Commission, attorney general, or supervisor in connection with prosecuting such action if the Commission, State attorney general, or State bank supervisors (as the case may be) is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) Any person that violates, through any act or omission, any provision of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Commission under this title shall forfeit and pay a civil penalty pursuant to this subsection determined as follows:

(A) FIRST TIER.—For any violation of any law, regulation, final order or condition imposed in writing by the Commission, or for any failure to pay any fee or assessment imposed by the Commission (including any fee or assessment for which a related person may be liable), a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), for any violation of a regulation prescribed under section 136 or for any person that recklessly engages in a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Commission under this title, relating to the provision of an alternative consumer financial product or service, a civil penalty shall not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Commission under this title, a civil penalty shall not exceed $1,000,000 for each day during which such violation continues.

(2) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (1), the Commission or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(3) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Commission may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (1). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(4) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Commission, unless—

(A) the Commission gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Commission.

SEC. 156. REFERRALS FOR CRIMINAL PROCEEDINGS.

Whenever the Commission obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Commission may transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. No provision of this section shall be construed as affecting any other authority of the Commission to disclose information.

SEC. 157. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) has provided information to the Commission or to any other State, local, or Federal Government authority or law enforcement official information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any other law that is subject to the jurisdiction of the Commission, or any regulation, order, standard, or prohibition prescribed by the Commission;

(2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of any provision of this Act or any other law that is subject to the jurisdiction of the Commission, or any regulation, order, standard, or prohibition prescribed by the Commission;

(3) has filed or instituted, or has caused to be filed or instituted, any proceeding under any enumerated consumer law or any law for which authorities were transferred by subtitles F and H; or

(4) has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, regulation, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Commission.

(b) COVERED EMPLOYEE DEFINED.—For the purposes of this section, the term "covered employee" means any individual performing tasks related to the provision of a financial product or service to a consumer.

(c) TIMETABLES.—

(1) FILING COMPLAINT.—Any individual who believes that such individual has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, before the end of the 180-day period beginning on the date on which such violation occurs, file (or have any person file on behalf of such individual) a complaint with the Secretary of Labor (hereafter in this subsection referred to as the "Secretary", notwithstanding section 101(34)) alleging such discharge or discrimination and identifying the person responsible for such act.

(2) SECRETARY'S ACTION ON RECEIPT OF COMPLAINT.—Upon receipt of a complaint by any individual under paragraph (1), the Secretary shall notify, in writing, the person named in the complaint who is alleged to have committed the violation of—

(A) the filing of the complaint;

(B) the allegations contained in the complaint;

(C) the substance of the evidence supporting the complaint; and

(D) the opportunities that will be afforded to such person under paragraph (3).

(3) INVESTIGATION, HEARING, AND ORDERS.—

(A) FINDINGS.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the individual filing the complaint and the person named in the complaint who is alleged to have committed the violation an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

(B) PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B).

(C) OBJECTIONS TO FINDINGS OR PRELIMINARY ORDER.—Not later than 30 days after the date of notification of findings under subparagraph (A), the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record.

(D) OBJECTIONS DO NOT CONSTITUTE A STAY.—The filing of objections under subparagraph (C) shall not operate to stay any reinstatement remedy contained in the preliminary order.

(E) EXPEDITIOUS HEARING.—Any hearing requested under subparagraph (C) shall be conducted expeditiously.

(F) FINALITY OF ORDER.—If a hearing is not requested under subparagraph (C) with respect to any findings of the Secretary under subparagraph (A) within the 30-day period described in subparagraph (C), the preliminary order shall be deemed a final order that is not subject to judicial review.

(4) STANDARDS FOR DETERMINATION.—

(A) PRIMA FACIE EVIDENCE OF CONTRIBUTION.—The Secretary shall dismiss a complaint filed under paragraph (1) and shall not conduct an investigation otherwise required under paragraph (3)(A) unless the individual filing the complaint makes a prima facie showing that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) PROHIBITION ON INVESTIGATION IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (3) shall be conducted if the employer demonstrates, by clear and convincing evidence,

that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) CONTRIBUTING FACTOR REQUIREMENT.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) PROHIBITION ON FINAL ORDER IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.—Relief may not be ordered under paragraph (3) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(5) FINAL ORDER.—

(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (3), the Secretary shall issue a final order providing the relief prescribed by this subsection or denying the complaint.

(B) SETTLEMENT AGREEMENT.—At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(C) CONTENTS OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to such individual's former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with such individual's employment; and

(iii) to provide compensatory damages to the complainant.

(D) COSTS AND ATTORNEYS FEES.—If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(E) FRIVOLOUS OR BAD FAITH COMPLAINTS.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(6) DE NOVO ACTION ON CLAIM.—

(A) ACTION AT LAW OR EQUITY.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant who filed such complaint may bring an action at law or equity for de novo review in the appropriate district court of the United States.

(B) JURY TRIAL.—At the request of either party to an action brought under subparagraph (A), such action shall be tried by the court with a jury.

(C) STANDARDS FOR DETERMINATION.—The standards for determination established under paragraph (4) shall apply in any action under this paragraph.

(D) RELIEF.—The court shall have jurisdiction to grant all relief, including injunctive relief and compensatory damages, that necessary to make the complainant who sought de novo review whole, including—

(i) reinstatement with the same seniority status that the complainant would have had, but for the discharge or discrimination;

(ii) the amount of back pay, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(E) NOT REVIEWABLE.—The decision of the court shall be final without further review.

(7) JUDICIAL REVIEW OF FINAL ORDER.—

(A) IN GENERAL.—Unless a complainant brings a de novo action under paragraph (6), any person adversely affected or aggrieved by a final order issued under paragraph (5) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect

to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation.

(B) STATUTE OF LIMITATION.—Any petition for review of a final order under subsection shall be filed not later than 60 days after the date of the issuance of the final order by the Secretary.

(C) STANDARDS FOR REVIEW.—The standards for review established under chapter 7 of title 5, United States Code, shall apply in any review of a final order under this paragraph.

(D) EFFECT OF PROCEEDINGS AS STAY.—The commencement of proceedings under this paragraph shall not operate as a stay of the final order of the Secretary under review, unless so ordered by the court.

(E) LIMITATION ON EFFECT OF OTHER PROCEEDINGS.—Except as provided in paragraph (6) and this paragraph, an order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(8) ENFORCEMENT OF ORDERS BY SECRETARY.—

(A) IN GENERAL.—Whenever any person has failed to comply with an order issued under paragraph (5), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.

(B) RELIEF.—In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(9) ENFORCEMENT OF ORDER BY AGGRIEVED PARTY.—

(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (5) may commence a civil action against the person to whom such order was issued to require compliance with such order.

(B) RELIEF.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(d) ACTION IN NATURE OF MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Notwithstanding any law and except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS.—Notwithstanding any law and except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable and to the extent the agreement requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(2) unless the Commission determines by regulation that such provision is inconsistent with the purposes of this Act.

SEC. 158. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 161. TRANSFER OF CERTAIN FUNCTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Commission.

(B) BOARD OF GOVERNORS' AUTHORITY.—The Commission shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Commission.

(B) CHAIRMAN'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Commission.

(B) DIRECTOR'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Commission.

(B) CORPORATION'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), the consumer financial protection functions of the Federal Trade Commission that are contained within the enumerated consumer laws are transferred to the Commission, except as provided in section 122(e). This transfer shall not be subject to the provisions of section 3503 of title 5, United States Code.

(B) FTC'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Federal Trade Commission that were contained within the enumerated statutes, except as provided in section 122(e), on the day before the designated transfer date.

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Commission.

(B) NATIONAL CREDIT UNION ADMINISTRATION'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 are transferred to the Commission.

(B) SECRETARY OF HUD'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, on the day before the designated transfer date

(b) TRANSFERS OF FUNCTIONS SUBJECT TO BACKSTOP ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (a) shall not affect the authority of the agencies identified in subsection (a) from initiating enforcement proceedings under the circumstances described in section 122(e)(3).

(c) TERMINATION OF AUTHORITY OF TRANSFEROR AGENCIES TO COLLECT FEES FOR CONSUMER FINANCIAL PROTECTION PURPOSES.—Authorities of the agencies identified in subsection (a) to assess and collect fees to cover the cost of conducting consumer financial protection functions shall terminate on the day before the designated transfer date.

(d) CONSUMER FINANCIAL PROTECTION FUNCTIONS DEFINED.—For purposes of this subtitle, the term "consumer financial protection functions" means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services, including the authority to assess and collect fees for those purposes, except that such term shall not include any such function relating to an agency's responsibilities under the Community Reinvestment Act of 1977.

(e) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the designated transfer date.

SEC. 162. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary—

(1) shall, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Commission under section 161; and

(2) shall publish notice of that designation in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designation in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days nor later than 18 months after the date of the enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of the enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible on the date that is 18 months after the date of the enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case shall any date designated under this section be later than 24 months after the date of the enactment of this Act.

SEC. 163. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 161(a)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Commission by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Commission by this title, except that the Commission shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 161(a)(4) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Commission by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit In-

surance Corporation transferred to the Commission by this title, except that the Commission shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—Section 161(a)(5) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Commission by this title; and

(2) existed on the day before the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 161(a)(6) shall not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Commission by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Commission by this title, except that the Commission shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 161(a)(2) shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Commission by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Commission by this title before the designated transfer date, except that the Commission shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 161(a)(3) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Commission by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Commission by this title before the designated transfer date, except that the Commission shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 161(a)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of Housing and Urban Development, the Department of Housing and Urban Development, or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of Housing and Urban Development under the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for

Mortgage Licensing Act of 2008 transferred to the Commission by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Secretary of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of Housing and Urban Development transferred to the Commission by this title before the designated transfer date, except that the Commission shall be substituted for the Secretary of Housing and Urban Development (or such Department) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, REGULATIONS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and regulations that have been issued, made, prescribed, or allowed to become effective by the Board of Governors (or any Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(i) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the designated transfer date, the Commission—

(1) shall, after consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Secretary of Housing and Urban Development identify the regulations continued under subsection (g) that will be enforced by the Commission; and

(2) shall publish a list of such regulations in the Federal Register.

(j) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Commission.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date but which has not become effective before that date, shall take effect as a regulation of the Commission according to its terms.

SEC. 164. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Commission and the Board of Governors shall—

(i) jointly determine the number of employees of the Board necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Commission by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Commission in a manner that the Commission and the Board of Governors, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Commission for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Commission and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Commission by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Commission in a manner that the Commission and the Board of Directors of the Corporation, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Commission for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Commission and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Commission by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Commission in a manner that the Commission and the National Credit Union Administration Board, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Commission for employment.

(4) CERTAIN HUD EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Commission and the Secretary of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer financial protection functions of the Secretary of Housing and Urban Development that are transferred to the Commission by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Commission in a manner that the Commission and the Secretary of Housing and Urban Development, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Commission for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Commission of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant to such subparagraph) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of such employee's position assignment not later than 120 days after the effective date of the employee's transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Commission with the same status and tenure as he or she held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of employees transferring to the Commission from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Commission shall not be subject to any additional certification requirements before being placed in a comparable examiner's position at the Commission examining the same types of institutions as the transferred examiners examined before such examiners were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 5-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date shall not, during the 5-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside such transferred employee's local locality pay area as defined by the Commission of the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Commission to—

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

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign a supervisory employee outside such employee's locality pay area as defined by the Director of the Office of Personnel Management when the Commission determines that the reassignment is necessary for the efficient operation of the Commission.

(g) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 1-year period beginning on the designated transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Commission to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Commission.

(4) PAY INCREASES PERMITTED.—Paragraph (1) shall not be construed as limiting the authority of the Commission to increase a transferred employee's pay.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Commission determines, during the period beginning 1 year after the designated transfer date and ending 3 years after the designated transfer date, that a reorganization of the staff of the Commission is required—

(i) that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Director of the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Commission shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Director of the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Director of the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Commission as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Commission determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Commission is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Commission shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in such employee's existing retirement plan as long as the employee remains employed by the Commission.

(ii) EMPLOYER'S CONTRIBUTION.—The Commission shall pay any employer contributions to the existing retirement plan of each transferred employee as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before the date of the employee's transfer to the Commission may, during the period beginning 6 months after the designated transfer date and ending 1 year after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) COMMISSION PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for Commission employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Commission shall deposit into the account established under clause (i) the employer contributions that the Commission makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Commission shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) EXISTING RETIREMENT PLAN.—The term "existing retirement plan" means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date.

(ii) FEDERAL EMPLOYEE RETIREMENT PLAN.—The term "Federal employee retirement program" means the retirement program for Federal employees established by chapters 83 and 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long-term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Commission shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Commission decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Commission's decision takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG-TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Commission decides not to continue participation in any long-term care insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Commission's decision

takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in Part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Commission shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Commission and the Director of the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a health benefits plan administered by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors, the Secretary of Housing and Urban Development, or a Federal reserve bank, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Commission, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Commission shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Commission and the Director of the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or a Federal reserve bank immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Commission shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Commission—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office

of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees' status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Commission shall work with the Director of the Office of Personnel Management and other entities with expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 165. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Commission may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of the enactment of this Act.

SEC. 166. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Commission under this subtitle until the appointment of the Commission is confirmed by the Senate in accordance with section 112.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury may provide administrative services necessary to support the Commission before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—For the purposes of carrying out the authorities granted in this section, there are appropriated to the Secretary of the Treasury such sums as are necessary. Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

Subtitle G—Regulatory Improvements

SEC. 171. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(iv) any other data deemed appropriate by the Commission.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Commission, or to a Federal banking agency, in accordance with regulations prescribed by the Commission.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Commission.

(d) COMMISSION USE.—The Commission—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

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

(e) REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—The Commission shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) DATA COMPILATION REGULATIONS.—The Commission shall prescribe regulations regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

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

(1) COMMISSION.—The term "Commission" means the Consumer Financial Protection Commission.

(2) CREDIT UNION.—The term "credit union" means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(3) DEPOSIT ACCOUNT.—The term "deposit account" includes any checking account, savings account, credit union share account, and other type of account as defined by the Commission.

(4) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term "Federal banking agencies" means all of those agencies.

(5) FINANCIAL INSTITUTION.—The term "financial institution"—

(A) has the meaning given to the term "insured depository institution" in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

SEC. 172. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

"§ 704B. Small business loan data collection

"(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women- and minority-owned small businesses.

"(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

"(1) inquire whether the business is a women- or minority-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means and whether or not such application is in response to a solicitation by the financial institution; and

"(2) maintain a record of the responses to such inquiry separate from the application and accompanying information.

"(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

"(d) NO ACCESS BY UNDERWRITERS.—

"(1) IN GENERAL.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

"(2) EXCEPTION.—If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution will provide notice to the applicant of the access of the underwriter to this information, along with notice that the financial institution may not discriminate on this basis of this information.

"(e) FORM AND MANNER OF INFORMATION.—

"(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Commission, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

"(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

"(A) The number of the application and the date the application was received.

"(B) The type and purpose of the loan or other credit being applied for.

"(C) The amount of the credit or credit limit applied for and the amount of the credit transaction or the credit limit approved for such applicant.

"(D) The type of action taken with respect to such application and the date of such action.

"(E) The census tract in which is located the principal place of business of the small business loan applicant.

"(F) The gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application.

"(G) The race, sex, and ethnicity of the principal owners of the business.

"(H) Any additional data the Commission determines would aid in fulfilling the purposes of this section.

"(3) INCLUSION OF PERSONALLY IDENTIFIABLE INFORMATION PROHIBITED.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, and any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

"(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Commission may, in the discretion of the Commission, delete or modify data collected under this section which is or will be available to the public if the Commission determines that the deletion or modification of the data would advance a compelling privacy interest.

"(f) AVAILABILITY OF INFORMATION.—

"(1) SUBMISSION TO AGENCY.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Commission.

"(2) AVAILABILITY OF INFORMATION.—

"(A) IN GENERAL.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Commission.

"(B) ANNUAL DISCLOSURE TO THE PUBLIC.—In addition to the availability by request under subparagraph (A) of data compiled and maintained under this section, the Commission shall annually provide such data to the public.

"(C) PROCEDURES.—The procedures for disclosing data compiled and maintained under this section to the public shall be determined by the Commission by regulation.

"(3) COMPILATION OF AGGREGATE DATA.—

"(A) IN GENERAL.—The Commission may, in the discretion of the Commission, compile for the Commission's own use compilations of aggregate data.

"(B) PUBLIC AVAILABILITY OF AGGREGATE DATA.—The Commission may make public compilations of aggregate data in such manner as the Commission may determine to be appropriate.

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

"(1) FINANCIAL INSTITUTION.—The term 'financial institution' means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

"(2) MINORITY-OWNED BUSINESS.—The term 'minority-owned business' means a business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(3) WOMEN-OWNED BUSINESS.—The term 'women-owned business' means a business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

"(4) MINORITY.—The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(5) SMALL BUSINESS LOAN.—The term 'small business loan' shall be defined by the Commission, which may take into account—

"(A) the gross revenues of the borrower;

"(B) the total number of employees of the borrower;

"(C) the industry in which the borrower has its primary operations; and

"(D) the size of the loan.

"(h) COMMISSION ACTION.—

"(1) IN GENERAL.—The Commission shall prescribe such regulations and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

"(2) EXCEPTIONS.—The Commission, by regulation or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of institutions from the requirements of this section as the Commission determines to be necessary or appropriate to carry out the purposes and objectives of this section.

"(3) GUIDANCE.—The Commission shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for the purposes of this section.'".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) by striking "or" after the semicolon at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; or"; and

(3) by inserting after paragraph (4), the following new paragraph:

"(5) to make an inquiry under section 704B in accordance with the requirements of such section.".

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704A the following new item:

"704B. Small business loan data collection.".

(d) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

SEC. 173. ANNUAL FINANCIAL AUTOPSY.

(a) STUDY REQUIRED.—Not later than March 31 of each calendar year, the Commission shall—

(1) conduct a scientific sampling of foreclosures and bankruptcies during the previous calendar year in each State or territory of the United States; and

(2) identify any underlying causes of such bankruptcies or foreclosures, including any specific financial products or services that have been the cause of substantial numbers of such bankruptcies or foreclosures.

(b) REPORT.—After the completion of each study required under subsection (a), the Commission shall submit a report to the Congress containing—

(1) any conclusions made by the Commission in carrying out such study;

(2) any specific financial products or services that the Commission has identified to have caused a substantial number of bankruptcies or foreclosures, as well as which companies or individuals provided such financial products or services; and

(3) any recommendations the Commission has for legislation that would reduce the underlying causes of bankruptcies and foreclosures identified in such study.

Subtitle H—Conforming Amendments

SEC. 181. AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.

(a) ESTABLISHMENT.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App. 3, 8G(a)(2)) is amended by inserting "the Consumer Financial Protection Commission," before "the Consumer Product Safety Commission,".

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

SEC. 182. AMENDMENTS TO THE PRIVACY ACT OF 1974.

(a) APPLICABILITY.—Section 552a of title 5, United States Code, is amended by adding at the end the following new subsection:

"(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Commission Act of 2009, this section shall apply with respect to the Consumer Financial Protection Commission.".

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

SEC. 183. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) SECTION 803(1).—Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3802(1)) is amended by striking paragraphs (B) and (C).

(b) SECTION 804(a).—Section 804(a) of the Alternative Mortgage Transaction Parity Act of l982 (12 U.S.C. 3803(a)) is amended—

(1) in paragraphs (1), (2), and (3), by inserting "on or before the designated transfer date, as determined in section 1062 of the Consumer Financial Protection Commission Act of 2009" after "transactions made" each place such term appears;

(2) in paragraph (2), by striking "and" at the end;

(3) in paragraph (3), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(4) with respect to transactions made after the designated transfer date, as determined in section 1062 of the Consumer Financial Protection Commission Act of 2009, only in accordance with regulations governing alternative mortgage transactions as issued by the Consumer Financial Protection Commission for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Commission with regard to federally chartered housing creditors under laws other than this section.".

(c) SECTION 804.—Section 804 of the Alternative Mortgage Transaction Parity Act of l982 (12 U.S.C. 3803) is amended—

(1) by striking subsection (c) and inserting the following new subsection:

"(c) EFFECT OF STATE LAW.—

"(1) IN GENERAL.—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.

"(2) RULE OF CONSTRUCTION.—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."; and

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

"(d) DUTIES OF CONSUMER FINANCIAL PROTECTION COMMISSION.—The Consumer Financial Protection Commission shall—

"(1) review the regulations identified by the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision (as those regulations exist on the designated transfer date, as de-

termined in section 1062 of the Consumer Financial Protection Commission Act of 2009) as applicable under paragraphs (1), (2), and (3) of subsection (a);

"(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of section 121 of the Consumer Financial Protection Commission Act of 2009; and

"(3) prescribe regulations under subsection (a)(4) after the designated transfer date, as determined under such Act.".

(d) EFFECTIVE DATE AND SCOPE OF APPLICATION.—

(1) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

(2) SCOPE OF APPLICATION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of l982 which is entered into on or before the designated transfer date.

SEC. 184. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

(a) TRUTH IN LENDING ACT.—

(1) SECTION 103.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by striking subsection (b) and inserting the following new subsection:

"(b) DEFINITION OF BOARD.—The term 'Board' means the 'Board of Governors of the Federal Reserve System'".

(2) UNIVERSAL AMENDMENT RELATING TO BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking "Board" each place such term appears, including in chapters 4 and 5 relating to credit billing and consumer leases, and inserting "Consumer Financial Protection Commission".

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to sections 108(a) (as amended by paragraph (4)) and 140(d)) or any reference in either such section to the term "Board".

(3) SECTION 105.—Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by striking the first sentence and inserting the following: "The Consumer Financial Protection Commission shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.".

(4) SECTION 108.—Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

"(a) ENFORCING AGENCIES.—Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance with the requirements imposed under this title shall be enforced as follows:

"(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

"(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, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

"(C) depository institution insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

"(2) Under subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Commission.

"(3) Under the Federal Credit Union Act, by the head of the agency responsible for chartering and regulating Federal credit unions.

"(4) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

"(5) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

"(6) Under the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association."; and

(B) by striking subsection (c) and inserting the following new subsection:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 122 of the Consumer Financial Protection Commission Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Consumer Financial Protection Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.".

(5) UNIVERSAL AMENDMENT RELATING TO THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking "Federal Trade Commission" each place such term appears and inserting "Consumer Financial Protection Commission".

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to sections 108(c) (as amended by paragraph (4)) and 129(m) (as amended by paragraph (7)) or any reference in either such section to the term "Federal Trade Commission".

(6) SECTION 127.—Subparagraph (C) of section 127(b)(11) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)) is amended to read as follows:

"(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Consumer Financial Protection Commission , the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5 percent minimum monthly payment on a balance of $300 at an interest rate of 17 percent would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Consumer Financial Protection Commission at this toll-free number: _____ [the blank space to be filled in by the creditor].' A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).".

(7) SECTION 129.—Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended to read as follows:

"(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Consumer Financial Protection Commission pursuant to subsection (l)(2) of this section shall be treated as a violation of a regulation promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.".

(b) FAIR CREDIT REPORTING ACT.—

(1) UNIVERSAL AMENDMENTS RELATING TO THE FEDERAL TRADE COMMISSION.—Other than in connection with the amendment made by paragraph (7)(A), the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by striking "Federal Trade Commission" each place such term appears and inserting "Consumer Financial Protection Commission";

(B) by striking "Commission" each place such term appears (other than in connection with the term amended in subparagraph (A)) and inserting "Consumer Financial Protection Commission"; and

(C) by striking "Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly" each place such term appears in sections 605(h)(2), 623(a)(8)(A), and 623(e)(1) and inserting "Consumer Financial Protection Commission shall".

(2) SECTION 603.—Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is amended by striking "Board of Governors of the Federal Reserve System" and inserting "Consumer Financial Protection Commission".

(3) SECTION 604.—Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended—

(A) by striking subparagraph (C) of paragraph (3) and inserting the following new subsections:

"(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Consumer Financial Protection Commission (with respect to any covered person subject to the jurisdiction of such agency under paragraph (2) of section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).''; and

(B) by striking paragraph (5) and inserting the following new paragraph:

"(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

"(A) REGULATIONS REQUIRED.—The Consumer Financial Protection Commission may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.''.

(4) SECTION 611.—Subsection 611(e)(2) of the Fair Credit Reporting Act (15 U.S.C.1681i(e)(2)) is amended to read as follows:

"(2) EXCLUSION.—Complaints received or obtained by the Consumer Financial Protection Commission pursuant to its investigative authority under the Consumer Financial Protection Commission Act of 2009 shall not be subject to paragraph (1).''.

(5) SECTION 615.—Subparagraph 615(h)(6)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681m(h)(6)(A)) is amended to read as follows:

"(A) RULES REQUIRED.—The Consumer Financial Protection Commission shall prescribe rules.''.

(6) SECTION 621.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

"(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

"(1) IN GENERAL.—Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of such Act with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (subject to section 122 of the Consumer Financial Protection Commission Act of 2009), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

"(2) CIVIL MONEY PENALTIES.—

"(A) IN GENERAL.—Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such ac-

tion, such person shall be liable for a civil penalty of not more than $2,500 per violation.

"(B) FACTORS IN DETERMINING AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

"(3) EXCEPTION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission or the Consumer Financial Protection Commission , as the case may be, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.";

(B) by striking subsection (b) and inserting the following new subsection:

"(b) ENFORCEMENT BY OTHER AGENCIES.—Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) of section 615 shall be enforced as follows:

"(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

"(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, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System;

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

"(2) Under subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission in the case of a covered person under that Act.

"(3) Under the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union.

"(4) Under subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.

"(5) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

"(6) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

"(7) Under the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission.

"(8) Under the Federal securities law and any other laws subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person subject to the jurisdiction of the Securities and Exchange Commission.

Any term used in paragraph (1) that is not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to such term in section 1(b) of the International Banking Act of 1978.";

(C) by striking subsection (e) and inserting the following new subsection:

"(e) REGULATORY AUTHORITY.—The Consumer Financial Protection Commission shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to a covered person described in subsection (b)"; and

(D) in the heading of subsection (g) by striking "FTC".

(7) SECTION 623.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended—

(A) by amending subparagraph (a)(7)(D) to read as follows:

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF AGENCY TO PREPARE.—The Consumer Financial Protection Commission shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Consumer Financial Protection Commission.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Consumer Financial Protection Commission, or the financial institution uses any such model form and rearranges its format.".

(B) by amending subsection (e) to read as follows:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Consumer Financial Protection Commission shall, with respect to the entities that are subject to its enforcement authority under section 621—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures or implementing the guidelines established pursuant to subparagraph (A).

"(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Consumer Financial Protection Commission shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies."

(c) EQUAL CREDIT OPPORTUNITY ACT.—

(1) SECTION 701.—Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(2) SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended to read as follows:

"(c) The term 'Commission' means the Consumer Financial Protection Commission.".

(3) SECTION 703.—Section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b) is amended—

(A) by striking subsection (b);

(B) by redesignating paragraphs (1), (2), (3), (4), and (5) of subsection (a) as subsections (a), (b), (c), (d), and (e), respectively;

(C) in subsection (c) (as so redesignated)—

(i) by striking "paragraph (2)" and inserting "subsection (b)"; and

(ii) by striking "such paragraph" and inserting "such subsection;"

(D) in subsection (d) (as so redesignated)—

(i) by striking "subsection" and inserting "section'"

(ii) by striking "Act" and inserting "title"; and

(iii) by striking "this paragraph" and inserting "this subsection"; and

(E) by striking "Board" each place such term appears in such section and inserting "Commission".

(4) SECTION 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking "Compliance" and inserting "Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance";

(ii) in paragraph (1)(A), by striking "Office of the Comptroller of the Currency" and inserting "head of the agency responsible for chartering and regulating national banks";

(iii) in paragraph (1)(B), by striking "and" after the semicolon;

(iv) in paragraph (1)(C), by inserting "and" after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

"(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;"; and

(vi) by amending paragraph (2) to read as follows:

"(2) Subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission.";

(B) by striking subsection (c) and inserting the following new subsection:

"(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 102 of the Consumer Financial Protection Commission Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any regulation prescribed by the Commission under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule."; and

(C) in subsection (d), by striking "Board" and inserting "Consumer Financial Protection Commission".

(5) SECTION 704a.—Section 704A(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691c–1(a)(1)) is amended in by striking "Board" and inserting "Consumer Financial Protection Commission".

(6) SECTION 705.—Section 705 of the Equal Credit Opportunity Act (15 U.S.C. 1691d) is amended—

(A) in subsection (f), by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission"; and

(B) in subsection (g), by striking "Board" and inserting "Consumer Financial Protection Commission".

(7) SECTION 706.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended—

(A) in subsection (e)—

(i) by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission"; and

(ii) by striking "Federal Reserve System" and inserting "Consumer Financial Protection Commission";

(B) in subsection (f), by striking "two years" each place such term appears and inserting "5 years";

(C) in subsection (g)—

(i) by striking "The agencies having", in the 1st sentence, and inserting "The Consumer Financial Protection Commission and the agencies having"

(ii) by striking "Each agency referred", in the 2nd sentence, and inserting "The Consumer Financial Protection Commission and each agency referred";

(iii) by striking "Each such agency", in the 3rd sentence, and inserting "The Consumer Financial Protection Commission and each such agency"; and

(iv) by striking "whenever the agency" in the 3rd sentence, and inserting "whenever the Consumer Financial Protection Commission or an agency having responsibility for administrative enforcement under section 704"; and

(D) in subsection (k)—

(i) by striking "Whenever an agency" and inserting "Whenever the Consumer Financial Protection Commission or an agency";

(ii) by striking "the agency shall notify" and inserting "the Consumer Financial Protection Commission, or an agency referred to in any such paragraph, as the case may be, shall notify".

(8) SECTION 707.—Section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(d) FAIR DEBT COLLECTION PRACTICES ACT.—

(1) SECTION 813.—Section 813(e) of the Fair Debt Collection Practices Act (15 U.S.C. 1692k(e)) is amended by striking "Commission" and inserting "Consumer Financial Protection Commission".

(2) SECTION 814.—Section 814 of the Fair Debt Collection Practices Act (15 U.S.C. 1692l) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

"(a) FEDERAL TRADE COMMISSION.—Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.";

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by striking "Compliance" and inserting "Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance".

(ii) in paragraph (1)(A), by striking "Office of the Comptroller of the Currency;" and inserting "head of the agency responsible for chartering and regulating national banks";

(iii) in paragraph (1)(B), by striking "and" after the semicolon;

(iv) in paragraph (1)(C), by inserting "and" after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

"(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;"; and

(vi) by striking paragraph (2) and inserting the following new paragraph:

"(2) subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission;"; and

(C) by striking subsection (d) and inserting the following new subsection:.

"(d) REGULATIONS.—The Consumer Financial Protection Commission may prescribe regulations with respect to the collection of debts by any debt collector.".

(3) SECTION 815.—Section 815 (15 U.S.C. 1692m) is amended by striking "Commission" each place such term appears and inserting "Consumer Financial Protection Commission".

(4) SECTION 817.—Section 817 (15 U.S.C. 1692o) is amended by striking "Commission" each place such term appears and inserting "Consumer Financial Protection Commission".

(e) ELECTRONIC FUND TRANSFER ACT.—

(1) SECTION 903.—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended in paragraph (6), by striking "Board" and inserting "Consumer Financial Protection Commission".

(1) SECTION 904.—Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(2) SECTION 905.—Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(3) SECTION 906.—Section 906(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693d(b)) is amended by striking "Board" and inserting "Consumer Financial Protection Commission".

(4) SECTION 907.—Section 907(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693e(b)) is amended by striking "Board" and inserting "Consumer Financial Protection Commission".

(5) SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(f)(7)) is amended by striking "Board" and inserting "Consumer Financial Protection Commission".

(6) SECTION 910.—Section 910(a)(1)(E) of the Electronic Fund Transfer Act (15 U.S.C. 1693h(a)(1)(E)) is amended by striking "Board" and inserting "Consumer Financial Protection Commission".

(7) SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693i(b)(3) is amended by striking "Board" and inserting "Consumer Financial Protection Commission".

(8) SECTION 915.—Section 915(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693m(d)) is amended—

(A) by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission"; and

(B) by striking "Federal Reserve System" and inserting "Consumer Financial Protection Commission".

(9) SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15 U.S.C. 1693o) is amended—

(A) in subsection (a)—

(i) by striking "Compliance" and inserting "Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance";

(ii) in paragraph (1)(A), by striking "Office of the Comptroller of the Currency" and inserting "head of the agency responsible for chartering and regulating national banks"; and

(iii) by striking paragraph (2) and inserting:

"(2) subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission;"; and

(B) by striking subsection (c) and inserting the following new subsection:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 122 of the Consumer Financial Protection Commission Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.".

(10) SECTION 918.—Section 918 of the Electronic Fund Transfer Act (15 U.S.C. 1693p) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(11) SECTION 919.—Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(12) SECTION 920.—Section 920 of the Electronic Fund Transfer Act (15 U.S.C. 1693r) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(f) AMENDMENTS TO HOEPA RELATING TO THE TRUTH IN LENDING ACT.—Section 158 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 nt.) (relating to hearings on home equity lending) is amended—

(1) in subsection (a), by striking "Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board," and inserting "Consumer Financial Protection Commission, in consultation with the Advisory Board to the Commission"; and

(2) in subsection (b), by striking "Board of Governors of the Federal Reserve System" and inserting "Consumer Financial Protection Commission".

(g) AMENDMENT TO THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 RELATING TO THE FAIR CREDIT REPORTING ACT.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 nt.) is amended by striking "The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and" and inserting "The Consumer Financial Protection Commission, with respect to a person subject to the enforcement authority of the Consumer Financial Protection Commission, the Commodity Futures Trading Commission, and".

SEC. 185. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) SECTION 605.—Section 605(f)(1) of the Expedited Funds Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting ", in consultation with the Consumer Financial Protection Commission,"after "Board".

(b) SECTION 609.—Section 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4008(a)) is amended by inserting ", in consultation with the Consumer Financial Protection Commission,"after "Board".

SEC. 186. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) SECTION 8.—Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended by adding at the end the following new paragraph:

"(6) REFERRAL TO CONSUMER FINANCIAL PROTECTION COMMISSION.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Commission when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in section 122(e)(2) of the Consumer Financial Protection Commission Act of 2009, by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.".

(b) SECTION 43.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) in subsection (c), by striking "Federal Trade Commission" and inserting "Consumer Financial Protection Commission";

(2) in subsection (d), by striking "Federal Trade Commission" and inserting "Consumer Financial Protection Commission";

(3) in subsection (e)(1), by striking "Federal Trade Commission" and inserting "Consumer Financial Protection Commission".

(e) SECTION 43(f).—Section 43(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(f)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(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 Commission Act of 2009 by the Consumer Financial Protection Commission with respect to any person (and without regard to the provision of a consumer financial product or service)."; and

(2) in paragraph (2), by striking subparagraph (C) and inserting the following new subparagraph:

"(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Consumer Financial Protection Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Consumer Financial Protection Commission for any violation of this section that is alleged in that complaint.".

SEC. 187. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

(a) SECTION 504.—Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

(1) by striking "The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury," and inserting "The Consumer Financial Protection Commission and"; and

(2) by striking ", and the Federal Trade Commission".

(b) SECTION 505.—

(1) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

(A) in the matter preceding paragraph (1), by striking "This subtitle and the regulations prescribed thereunder shall be enforced by" and inserting "Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, this subtitle and the regulations prescribed under this title shall be enforced by the Consumer Financial Protection Commission,"; and

(B) by inserting after paragraph (7) the following new paragraph:

"(8) Under the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission in the case of financial institutions and other covered persons and service providers subject to the jurisdiction of the Consumer Financial Protection Commission under that Act, but not with respect to the standards under section 501.".

(2) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended by inserting ", other than the Consumer Financial Protection Commission," after "described in subsection (a)".

SEC. 188. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) SECTION 303.—Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as paragraphs (2), (3), (4), (5), (6), and (7), respectively; and

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) The term 'Commission' means the Consumer Financial Protection Commission.".

(b) UNIVERSAL AMENDMENT RELATING TO COMMISSION.—Except as provided in subsections (c), (d), (e), and (f), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–11) is amended by striking "Board" each place such term appears and inserting "Commission".

(c) SECTION 304.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(1) in subsection (b)—

(A) by striking "and" after the semicolon at the end of paragraph (3);

(B) by striking "and gender" in paragraph (4), and inserting "age, and gender";

(C) by striking the period at the end of paragraph (4) and inserting a semicolon; and

(D) by inserting after paragraph (4) the following new paragraphs:

"(5) the number and dollar amount of mortgage loans grouped according to the following measurements:

"(A) the total points and fees payable at origination in connection with the mortgage as determined by the Commission, taking into account 15 U.S.C. 1602(aa)(4);

"(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

"(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

"(D) such other information as the Commission may require; and

"(6) the number and dollar amount of mortgage loans and completed applications grouped according to the following measurements:

"(A) the value of the real property pledged or proposed to be pledged as collateral;

"(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

"(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully-amortizing payments during any portion of the loan term;

"(D) the actual or proposed term in months of the mortgage loan;

"(E) the channel through which application was made, including retail, broker, and other relevant categories;

"(F) as the Commission may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

"(G) as the Commission may determine to be appropriate, a universal loan identifier;

"(H) as the Commission may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

"(I) the credit score of mortgage applicants and mortgagors in such form as the Commission may prescribe, except that the Commission shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

"(J) such other information as the Commission may require.";

(2) by striking subsection (h) and inserting the following new subsection:

"(h) SUBMISSION TO AGENCIES.—

"(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Commission or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Commission. Institutions will not be required to report new data required under section 188(c) before the first January 1 that occurs after the end of the 9-month period beginning on the date that regulations prescribed by the Commission are prescribed in final form.

"(2) REGULATIONS.—Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Commission, in cooperation with other appropriate regulators, including—

"(A) the head of the agency responsible for chartering and regulating national banks for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

"(B) the Federal Deposit Insurance Corporation for depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks;

"(C) the Director of the Office of Thrift Supervision for Federal savings associations and savings and loan holding companies;

"(D) the National Credit Union Administration Board for credit unions; and

"(E) the Secretary of Housing and Urban Development for other lending institutions not regulated by an agency referred to in subparagraphs (A), (B), (C), or (D),

shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public.

"(3) REQUIRED DISCLOSURES.—The regulations prescribed under paragraph (2) shall require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans.

"(4) ADDITIONAL DATA OR EXPLANATIONS.—Any reporting institution may submit in writing to the Commission or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.";

(3) in subsection (i), by striking "subsection (b)(4)" and inserting "paragraphs (4), (5), and (6) of subsections (b)";

(4) in subsection (j)—

(A) by striking "(as" where such term appears in paragraph (1) and inserting "(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise";

(B) by striking "in the format in which such information is maintained by the institution" where such term appears in paragraph (2)(A), and inserting "in such formats as the Commission may require"; and

(C) by striking paragraph (3) and inserting the following new paragraph:

"(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Commission may require."; and

(5) by striking paragraph (2) of subsection (m) and inserting the following new paragraph:

"(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Commission may require.".

(d) SECTION 305.—Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

"(b) POWERS OF CERTAIN OTHER AGENCIES.—Compliance with the requirements imposed under this title shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

"(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, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

"(C) depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(D) Federal savings associations, and savings and loan holding companies, by the Director of the Office of Thrift Supervision;

"(2) subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Commission;

"(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

"(4) other lending institutions, by the Secretary of Housing and Urban Development. 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 meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

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 meaning given to them in section 1(b) of the International Banking Act of 1978"; and

(2) by inserting at the end of section 305 the following new subsection:

"(d) OVERALL ENFORCEMENT AUTHORITY OF THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Commission may exercise its authorities under the Consumer Financial Protection Commission Act of 2009 to exercise principal authority to examine and enforce compliance by any person with the requirements under this title.".

(e) SECTION 306.—Subsection 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended to read as follows:

"(b) The Commission may, by regulation, exempt from the requirements of this title any State chartered depository institution within any State or subdivision of any state if the Commission determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the head of the agency responsible for chartering and regulating national banks under section 8 of the Federal Deposit Insurance Act in the case of national banks and savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.".

(f) SECTION 307.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is amended to read as follows:

"SEC. 307. RESEARCH AND IMPROVED METHODS.

"(a) ENHANCED COMPLIANCE IN ECONOMICAL MANNER.—

"(1) IN GENERAL.—The Consumer Financial Protection Commission, 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 Consumer Financial Protection Commission 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 APPROPRIATION.—There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

"(3) AUTHORITY OF COMMISSION.—The Consumer Financial Protection Commission is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

"(b) RECOMMENDATIONS TO THE CONGRESS.—The Consumer Financial Protection Commission shall recommend to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such additional legislation as the Consumer Financial Protection Commission deems appropriate to carry out the purpose of this title.".

SEC. 189. AMENDMENTS TO DIVISION D OF THE OMNIBUS APPROPRIATIONS ACT, 2009.

(a) Section 626(a) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking by paragraph (1) and inserting the following new paragraph:

"(1) The Consumer Financial Protection Commission shall have authority to prescribe regulations 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 regulation prescribed under this subsection shall be treated as a violation of a regulation prohibiting unfair, deceptive, or abusive

acts or practices under the Consumer Financial Protection Commission Act of 2009.";

(2) by striking paragraph (2);

(3) by striking paragraph (3); and

(4) by striking paragraph (4) and inserting the following new paragraph:

"(2) The Consumer Financial Protection Commission shall enforce the regulations 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 Commission Act of 2009 were incorporated into and made part of this section.".

(b) Section 626(b) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) is amended—

(1) by striking "Federal Trade Commission" and inserting "Consumer Financial Protection Commission";

(2) by striking "the Commission" and inserting "the Consumer Financial Protection Commission"; and

(3) by striking "primary Federal regulatory" and inserting "Consumer Financial Protection Commission".

SEC. 190. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in that portion of subsection (a) that precedes paragraph (1), subsection (a), by striking "Compliance" and inserting "Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance";

(2) in subsection (a)(2), by striking "and after the semicolon at the end;"

(3) in subsection (a)(3), by striking the period at the end and inserting "; and";

(4) by inserting after subsection (a)(3), the following new paragraph:

"(4) subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission."; and.

(5) in subsection (b)(2), by inserting ", subject to section 122 of the Consumer Financial Protection Commission Act of 2009" before the period at the end.

SEC. 191. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) SECTION 4.—Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603) is amended—

(1) in subsection (a), by striking the first sentence and inserting the following: "The Consumer Financial Protection Commission shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

(2) by striking "Secretary" each place such term appears and inserting "Consumer Financial Protection Commission"; and

(3) by striking "form" each place such term appears and inserting "forms".

(b) SECTION 5.—Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) by striking "Secretary" each place such term appears, and inserting "Consumer Financial Protection Commission"; and

(2) by striking the first sentence of subsection (a), and inserting "The Consumer Financial Protection Commission shall prepare and distribute booklets jointly complying with the requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.".

(c) SECTION 6.—Section 6(j)(3) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3)) is amended—

(1) by striking "Secretary" and inserting "Consumer Financial Protection Commission"; and

(2) by striking "by regulations that shall take effect not later than April 20, 1991," and inserting "by regulation,".

(d) SECTION 7.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended by striking "Secretary" and inserting "the Consumer Financial Protection Commission".

(e) SECTION 8.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended—

(1) in subsection (c)(5), by striking "prescribed by the Secretary" and inserting "prescribed by the Consumer Financial Protection Commission"; and

(2) in subsection (d)(4)—

(A) by striking "The Secretary," and inserting "The Consumer Financial Protection Commission, the Secretary,"; and

(B) by adding at the end the following new sentence: "However, to the extent that a Federal law authorizes the Consumer Financial Protection Commission and other Federal and State agencies to enforce or administer the law, the Consumer Financial Protection Commission shall have primary authority to enforce or administer that Federal law in accordance with section 122 of the Consumer Financial Protection Commission Act of 2009.".

(f) SECTION 10.—Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(d)) is amended by striking "Secretary" and inserting "Consumer Financial Protection Commission".

(g) SECTION 16.—Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by inserting "the Consumer Financial Protection Commission," before "the Secretary".

(h) SECTION 18.—Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2616) is amended by striking "Secretary each place such term appears" and inserting "Consumer Financial Protection Commission".

(i) SECTION 19.—Section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617) is amended by striking "Secretary" each place where such term appears and inserting "Consumer Financial Protection Commission".

SEC. 192. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) AMENDMENTS TO SECTION 1101.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) 'financial institution' means any bank, savings association, card issuer as defined in section 103(n) of the Truth in Lending Act, 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;"; and

(2) in paragraph (7)—

(A) by redesignating subparagraphs (F), (G), (H), and (I) as subparagraphs (G), (H), (I), and (J), respectively; and

(B) by inserting after subparagraph (E) the following new subparagraph: "(F) the Consumer Financial Protection Commission;".

(b) AMENDMENTS TO SECTION 1112.—Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412) is amended by striking "and the Commodity Futures Trading Commission is permitted" and inserting "the Commodity Futures Trading Commission, and the Consumer Financial Protection Commission is permitted".

(c) AMENDMENTS TO SECTION 1113.—Section 1113 of the Right to Financial Privacy Act (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

"(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION COMMISSION.—Nothing in this chapter shall apply to the examination by or disclosure to the Consumer Financial Protection Commission of financial records or information in the exercise of its authority with respect to a financial institution.".

SEC. 193. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

(a) SECTION 1503.—Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is amended—

(1) by striking paragraph (9);

(2) by redesignating existing paragraph (1) as paragraph (2), redesignating existing paragraph (2) as paragraph (1), and moving paragraph (2) (as so redesignated) and inserting such paragraph after paragraph (1) (as so redesignated);

(3) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12), as so redesignated by paragraph (2), as paragraphs (2), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively.

(b) UNIVERSAL AMENDMENTS RELATING TO CONSUMER FINANCIAL PROTECTION COMMISSION.—The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking "a Federal banking agency" each place such term appears (other than in paragraph (9)(A)(ii)(II) (as so redesignated by subsection (a), relating to the definition of registered loan originator) or paragraph (12)(B)(ii)(II) (as so redesignated by subsection (a), relating to the definition of State-licensed loan originators) of section 1503 of such Act or inconnection with a reference

that is specifically amended by another provision of this section) and inserting "the Consumer Financial Protection Commission";

(2) by striking "Federal banking agencies" each place such term appears (other than in subsection (a)(4) (as so redesignated by subsection (a), relating to the definition of Federal banking agencies) or inconnection with a reference that is specifically amended by another provision of this section) and inserting "Consumer Financial Protection Commission"; and

(3) by striking "Secretary" each place such term appears (other than in connection with a reference that is specifically amended by another provision of this section) and inserting "Commission".

(c) SECTION 1507.—Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5106) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) IN GENERAL.—The Consumer Financial Protection Commission shall develop and maintain a system for registering employees of any 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 July 30, 2010."; and

(B) by striking "appropriate Federal banking agency and the Farm Credit Administration" where such term appears in paragraph (2) and inserting "Consumer Financial Protection Commission"; and

(2) in subsection (b), by striking "Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration", and inserting "Consumer Financial Protection Commission".

(d) SECTION 1508.—

(1) IN GENERAL.—Section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5107) is amended by adding at the end the following new subsection—

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Consumer Financial Protection Commission may prescribe 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) FACTORS TAKEN INTO ACCOUNT.—Such regulations 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 consumers' access to affordable and sustainable mortgage loans.".

(2) CLERICAL AMENDMENT.—The heading for section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 is amended by striking "**SECRETARY OF HOUSING AND URBAN DEVELOPMENT**" and inserting "**CONSUMER FINANCIAL PROTECTION COMMISSION**".

(e) SECTION 1510.—Section 1510 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is amended to read as follows:

"SEC. 1510. FEES.

"The Consumer Financial Protection Commission and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.".

(f) SECTION 1513.—Section 1513 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended to read as follows:

"SEC. 1513. LIABILITY PROVISIONS.

"The Consumer Financial Protection Commission, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Commission under section 1509, or any officer or employee of any such entity, shall not by subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.".

(g) SECTION 1514.—The heading for section 1514 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is amended by striking

"**UNDER HUD BACKUP LICENSING SYSTEM**" and inserting "**BY THE CONSUMER FINANCIAL PROTECTION COMMISSION**".

SEC. 194. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

(a) SECTION 263.—Section 263 of the Truth in Savings Act (12 U.S.C. 4302) is amended in subsection (b) by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(b) SECTION 265.—Section 265 of the Truth in Savings Act (12 U.S.C. 4304) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(c) SECTION 266.—Section 266(e) of the Truth in Savings Act is amended (12 U.S.C. 4305) by striking "Board" and inserting "Consumer Financial Protection Commission".

(d) SECTION 269.—Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by striking "Board" each place such term appears and inserting "Consumer Financial Protection Commission".

(e) SECTION 270.—Section 270 of the Truth in Savings Act (12 U.S.C. 4309) is amended—

(1) in subsection (a)—

(A) by striking "Compliance" and inserting "Subject to section 122 of the Consumer Financial Protection Commission Act of 2009, compliance";

(B) by striking subparagraph (A) of paragraph (1) and inserting the following new subparagraph:

"(A) by the head of the agency responsible for chartering and regulating national banks for national banks, and Federal branches and Federal agencies of foreign banks;"; and

(C) by adding at the end, the following new paragraph:

"(3) subtitle E of the Consumer Financial Protection Commission Act of 2009, by the Consumer Financial Protection Commission."; and

(2) in subsection (c), by striking "Board" and inserting "Consumer Financial Protection Commission".

(f) SECTION 272.—Section 272 of the Truth in Savings Act (12 U.S.C. 4311) is amended—

(1) in subsection (a), by striking "Board" and inserting "Consumer Financial Protection Commission"; and

(2) in subsection (b), by striking "regulation prescribed by the Board" each place such term appears and inserting "regulation prescribed by the Consumer Financial Protection Commission".

(g) SECTION 273.—Section 273 of the Truth in Savings Act (12 U.S.C. 4312) is amended in the last sentence by striking "Board" and inserting "Consumer Financial Protection Commission".

(h) SECTION 274.—Section 274(2) of the Truth in Savings Act (12 U.S.C. 4313) is amended by striking "Board" and inserting "Consumer Financial Protection Commission".

SEC. 195. 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—

(1) in subparagraph (B), by striking "and" at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) the Consumer Financial Protection Commission; and".

SEC. 196. EFFECTIVE DATE.

The amendments made by sections 183 through 195 shall take effect on the designated transfer date.

TITLE II—IMPROVEMENTS TO THE FEDERAL TRADE COMMISSION ACT

SEC. 201. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

(a) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended—

(1) by inserting "this Act or" after "violates" the first place such term appears;

(2) by inserting a comma after "Act" and after "section)"; and

(3) by inserting "a violation of this Act or is" before "prohibited".

(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

"(o) UNLAWFUL ASSISTANCE.—It is unlawful for any person, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act.".

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

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

"(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of Title 5 (without regard to any reference in such section to sections 556 and 557 of such title).";

(2) by striking subsections (c), (d)(1), (d)(2), (f), (i), and (j), and redesignating subsections (e), (g) and (h) as (d), (e) and (f);

(3) by redesignating paragraph (d)(3) as subsection (c); and

(4) in subsection (e)—

(A) in paragraph (1)(B), by striking "the transcript required by subsection (c)(5) of this section,";

(B) in paragraph (2), by striking everything following "error)"; and

(C) in paragraph (5), by striking subparagraph (C).

(d) Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D) by striking "; or" and inserting a semicolon; and

(2) by inserting after subparagraph (E) the following:

"(F) to obtain a civil penalty authorized under any provision of law enforced by the Commission.".

(e) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) is amended in the first sentence by inserting "the Commission or" after "brought by".

PURPOSE AND SUMMARY

H.R. 3126, the Consumer Financial Protection Agency Act of 2009, was introduced on July 8, 2009, by Rep. Barney Frank. H.R. 3126 is intended to improve consumer protection in the financial arena by creating one commission whose sole mission is consumer financial protection. H.R. 3126 would pull the consumer protection functions from each of the banking agencies, and some consumer financial protection functions from the Federal Trade Commission (FTC), and give those functions to the new commission. The legislation calls for the Consumer Financial Protection Agency (CFPA) to ensure that:

1. consumers have, understand, and can use the information they need to make responsible decisions about consumer financial products or services;
2. consumers are protected from abuse, unfairness, deception, and discrimination;
3. markets for consumer financial products or services operate fairly and efficiently with ample room for sustainable growth and innovation; and
4. traditionally underserved consumers and communities have access to financial services.

H.R. 3126 would consolidate in this new commission all consumer protection functions related to financial products, including rulemaking, supervision and examination, and enforcement. CFPA would have its own authority to issue rules prohibiting unfair, deceptive, and abusive acts, and would become the sole rulemaking authority for consumer financial protection statutes, including the Truth in Lending Act, the Equal Credit Opportunity Act, and the Fair Debt Collection Practices Act.

In addition, H.R. 3126 would provide the FTC with additional authorities to conduct rulemaking and enforce against unfair or deceptive acts or practices.

BACKGROUND AND NEED FOR LEGISLATION

Consumer protection in the financial arena is governed by various agencies with different jurisdictions and regulatory approaches. This disparate regulatory system has been blamed in part for the lack of aggressive enforcement against abusive and predatory loan products that contributed to the financial crisis, such as subprime and nontraditional mortgages.

FTC has broad authority to protect consumers from unfair, deceptive, and unlawful practices with respect to credit and debt. The authority of the FTC is limited, however, to those functions conducted by non-depository institutions. Depository institutions are overseen by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

At a hearing before the House Committee on Financial Services held on June 24, 2009, Kathleen Keest of the Center for Responsible Lending testified that banking regulators have been hesitant to address abusive practices. She stated: "Because abusive practices often produce short term profit, these regulators have typically viewed consumer protections as nothing more than a restraint on bank activity and revenues." [1]

FTC focuses on consumer protection, but it has a burdensome rulemaking process. At a hearing before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce in March 2009, Chairman Jon Leibowitz testified that the FTC "could have done more" in the area of consumer credit, but that the FTC is "a tiny agency" that has been "hamstrung by the Magnusson-Moss rulemaking process" and lacks "fining authority." [2]

LEGISLATIVE HISTORY

The Consumer Financial Protection Agency Act of 2009, H.R. 3126, was introduced on July 8, 2009, by Rep. Barney Frank as the "Consumer Financial Protection Agency Act of 2009". The bill was referred to the House Committee on Financial Services and the House Committee on Energy and Commerce. H.R. 3126 was subsequently referred to this Committee's Subcommittee on Commerce, Trade, and Consumer Protection on July 8, 2009. The Subcommittee held a legislative hearing titled: "The Proposed Consumer Financial Protection Agency: Implications for Consumers and the FTC." This hearing examined the proposal by the Obama Administration for the creation of a new consumer protection agency, a proposal that was introduced as H.R. 3126 on the same day.

The House Committee on Financial Services considered H.R. 3126 on October 22, 2009, and subsequently ordered reported the bill, amended, by a recorded vote of 39 yeas to 29 nays.

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[1] House Committee on Financial Services, Testimony of Kathleen Keest, *Hearing on Regulatory Restructuring: Enhancing Consumer Financial Products Regulation,* 111th Cong. (June 24, 2009).

[2] House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, Testimony of John Leibowitz, Chairman, Federal Trade Commission, *Hearing on Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public,* 111th Cong. (Mar. 24, 2009).

COMMITTEE CONSIDERATION

The Committee on Energy and Commerce met in open markup session on October 29, 2009, to consider H.R 3126. The Committee used for the underlying bill the language of H.R. 3126, as ordered reported by the Committee on Financial Services. The Committee considered amendments to the bill and subsequently ordered H.R. 3126 reported to the House, amended, by a recorded vote of 33 yeas to 19 nays. The bill was reported by the Committee as the "Consumer Financial Protection Commission Act of 2009".

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes on amendments offered to H.R. 3126 during Committee consideration. The Committee agreed to a motion by Mr. Waxman to order H.R. 3126 favorably reported to the House, amended, by a recorded vote of 33 yeas and 19 nays. The following is the recorded vote taken on final passage of H.R. 3126, including the names of those Members voting for and against:

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 133

BILL: **H.R. 3126**, the "Consumer Financial Protection Agency Act of 2009".

MOTION: A motion by Mr. Waxman to order H.R. 3126 favorably reported to the House, amended. (Final Passage)

DISPOSITION: **AGREED TO** by a roll call vote of 33 yeas to 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton		X	
Mr. Dingell	X			Mr. Hall		X	
Mr. Markey	X			Mr. Upton			
Mr. Boucher	X			Mr. Stearns		X	
Mr. Pallone	X			Mr. Deal		X	
Mr. Gordon	X			Mr. Whitfield		X	
Mr. Rush	X			Mr. Shimkus		X	
Ms. Eshoo	X			Mr. Shadegg			
Mr. Stupak	X			Mr. Blunt		X	
Mr. Engel	X			Mr. Buyer			
Mr. Green	X			Mr. Radanovich		X	
Ms. DeGette	X			Mr. Pitts		X	
Mrs. Capps	X			Ms. Bono Mack			
Mr. Doyle	X			Mr. Walden		X	
Ms. Harman	X			Mr. Terry		X	
Ms. Schakowsky	X			Mr. Rogers		X	
Mr. Gonzalez	X			Mrs. Myrick		X	
Mr. Inslee	X			Mr. Sullivan			
Ms. Baldwin	X			Mr. Murphy of PA			
Mr. Ross		X		Mr. Burgess		X	
Mr. Weiner	X			Ms. Blackburn		X	
Mr. Matheson		X		Mr. Gingrey			
Mr. Butterfield	X			Mr. Scalise		X	
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space		X					
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch	X						

10/29/2009

STATEMENT OF COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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 oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirements of 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 1074 and with respect to requirements of 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 anticipates that a CBO cost estimate letter will address these issues when the bill proceeds to consideration on the House floor.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 3126. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

EARMARK AND TAX AND TARIFF BENEFITS

H.R. 3126 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

ADVISORY COMMITTEE STATEMENT

The Committee finds that section 113 of H.R. 3126, as reported by the Committee on Financial Services, creates an advisory committee under the Federal Advisory Committee Act. The Committee on Energy and Commerce did not amend this section of the bill.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations.

H.R. 3126 creates a new executive branch agency in order to improve consumer protection in the financial arena and does not relate to employment or access to public services and accommodations in the legislative branch.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the report include unfunded mandates. The Committee anticipates that this issue will be addressed in a CBO cost estimate letter for the bill when it proceeds to consideration on the House floor.

COMMITTEE COST ESTIMATE

Clause 3(d) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 3126. The Committee anticipates that a CBO cost estimate letter will address these issues when the bill proceeds to consideration on the House floor.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

The Committee on Energy and Commerce considered H.R. 3126 as ordered to be reported by the Committee on Financial Services, but only amended certain sections of the bill. This analysis will discuss only those sections that differ from the legislation as ordered to be reported by the Committee on Financial Services.

Section 1. Short title

Section 1 provides that the short title of H.R. 3126 is, "The Consumer Financial Protection Commission Act of 2009."

Section 2. Table of contents

Section 2 provides the table of contents for the bill.

TITLE I—CONSUMER FINANCIAL PROTECTION COMMISSION

Section 1. Definitions

Section 1 of Title I defines the terms used in the legislation. It includes a definition of financial activity that serves as the basis for determining the jurisdiction of the Consumer Financial Products Commission (CFPC). The definition of "financial activity" specifically excludes the transmission, routing, or transient storage of information when that transmission serves purely as a conduit for information. In this situation, the entity transmitting the data is not the sender, is not the intended recipient, did not modify the data in any way, and does not treat the data being transmitted any differently from any other data sent over its pipes. That same entity, however, which serves as a mere conduit may also engage in a "financial activity" as defined by the bill.

Section 111. Establishment of the Consumer Financial Protection Commission

Section 111 establishes CFPC as an independent commission with principal offices in Washington, DC.

Section 112. Composition of the Commission

Subsection 112(a) establishes a five member commission with membership appointed by the President and confirmed by the Senate. Subsection 112(b) establishes that no more than three members of the Commission may be members of the same political party. Subsection 112(c) calls for the President to appoint a Chairman from among the sitting commissioners. The Chairman is given executive authority to appoint and supervise personnel employed by the Commission and to determine the use and expenditure of funds, but must be governed by general policies of the Commission. Subsection 112(d) establishes five year terms for commissioners, and allows the President to remove commissioners only for inefficiency, neglect of duty, or malfeasance in office. Members of the Commission may serve for up to a year following the expiration of their term while awaiting the appointment and confirmation of a replacement. Initial appointments would be staggered. No commissioners would be permitted to hold outside employment. Subsection 112(e) establishes a quorum of three members for the conduct of business, unless there are only three members serving on the Commission. In that case, two members would constitute a quorum. Subsection 112(f) dictates that the Commission shall have a seal. And subsection 122(g) establishes compensation rates for commissioners and the chairman.

Section 115. Administration

Section 115 provides the Chairman with the authority to appoint staff and officials of the Commission, and establishes several functional units of the Commission, including research, consumer financial education, and consumer complaints. This section makes clear that, in collecting and tracking consumer complaints, the Commission may create its own database or utilize an existing database. The section also calls on the Commission to share data as appropriate with federal banking agencies, FTC, other federal agencies, and state regulators.

Section 117. Consumer Advisory Board

Section 117 calls for the Commission to coordinate with other federal agencies and state regulators, including FTC.

Section 118. Reports to the Congress

Section 118 requires the Commission to submit reports to the appropriate committees of Congress. It further directs the Commission to appear before the appropriate committees of Congress upon request.

Section 118A. GAO small business studies

Section 118A calls on the Government Accountability Office (GAO) to examine the effects of the Commission's regulations on small businesses.

Section 120. Amendments relating to other administrative provision

Section 120 adds CFPC to the list of financial regulatory agencies that may communicate with Congress independently of the President. It further adds CFPC to the definition of "independent regulatory agency" under the Paperwork Reduction Act.

Section 122. Authorities

Section 122 provides certain authorities to CFPC. For cases in which there is overlap in enforcement authority with FTC, subsection 122(e) establishes a specific procedure for the agencies to consult and coordinate. Paragraph (2) calls on FTC to notify CFPC before it files an enforcement action under one of the laws for which FTC and CFPC share jurisdiction. If FTC files such an enforcement action, CFPC may intervene in the case. If, however, CFPC has already initiated a case against a particular entity for a particular action violating any of the laws for which the two commission share jurisdiction, FTC may not file its own case against the same entity for that same action violating the same law. Subparagraph (D) makes these restrictions and obligations reciprocal. This paragraph ensures that, when CFPC and FTC are investigating the same violations and considering enforcement actions against the same entities, they coordinate and do not file separate, but nearly identical, actions.

Section 161. Transfer of Certain Functions

Section 161 transfers the consumer protection functions of several agencies to CFPC. With regard to FTC, paragraph (a)(5) transfers the consumer financial protection functions that are contained within the enumerated statutes. The paragraph makes clear that this transfer would not lead to an automatic transfer of staff from FTC to CFPC. The Committee finds that, under this Act, FTC would retain much of its responsibility for consumer financial protection and would continue to need staff to conduct these functions.

TITLE II—IMPROVEMENTS TO THE FEDERAL TRADE COMMISSION ACT

Section 201. Amendments to the Federal Trade Commission Act

Section 201(a) of Title II of the bill enables the FTC to seek civil penalties in enforcement actions against violations of the FTC Act, not just violations of rules and orders, as the FTC Act currently allows.

Section 201(b) enables the FTC to enforce against those who knowingly or recklessly provide substantial assistance to entities that violate the FTC Act or any other laws enforceable by FTC relating to unfair or deceptive acts of practices. The paragraph further clarifies that this section is not intended to alter current federal law that addresses the roles and responsibilities of Internet companies for content and conduct of third parties. Most notably, the Communications Decency Act provides immunity to certain entities for content prepared by third parties. This encourages the development of new online services and creates incentives for Internet companies to act responsibly and remove unlawful conduct when it is discovered—without the fear of liability. This is not a wholesale exemption for Internet companies. Rather, it is recognition that the long-standing legal framework set forth in the Communications Decency Act is not changed by this bill.

Section 201(c) enables the FTC to promulgate rules relating to unfair or deceptive acts or practices using the procedures required by the Administrative Procedures Act (5 U.S.C. section 553). These procedures would replace the burdensome Magnusson-Moss procedures.

Section 201(d) strengthens the authority of the FTC to litigate its own cases when it seeks civil penalties against fraudulent actors. Under current law, if the FTC wants to seek civil penalties in an enforcement action, it must first refer the case to the U.S. Department of Justice (DOJ). DOJ has 45 days to decide whether it will bring the case on the FTC's behalf. The FTC can only litigate the case if, at the end of 45 days, DOJ decides not to take action. This subsection would give the FTC the authority to bring these civil penalty actions without delay.

EXPLANATION OF AMENDMENTS

The following amendments were adopted by the Committee on Energy and Commerce:

Chairman Waxman and Ranking Member Barton manager's amendment, which passed by a voice vote, makes several changes to the bill. The manager's amendment restructures the governance of the new agency, changing it from an agency headed by a single director to a commission headed by five commissioners. The amendment additionally changes the name of the new agency to the Consumer Financial Protection Commission. The manager's amendment also revises the definition of "financial activity" in section 101 to clarify that the term does not apply to transmission of data to the extent that the entity transmitting the data serves only as a conduit for the information and does not select or modify the information, and does not differentiate it from other types of data that the entity transmits. In addition, the amendment revises section 123(e) to provide FTC and CFPC with reciprocal notice and coordination obligations when enforcing laws that both commissions have the authority to enforce. Both commissions would be required to provide notice to the other prior to filing such a case whenever feasible, both would be authorized to join the other's case, and neither could bring a case against an entity for an action violating a law if the other commission has brought the same case against that entity for that same action violating the same law. In addition, the amendment makes several changes to ensure CFPC consults and coordinates with FTC in the development of a system for collecting consumer complaints, and ensures that CFPC may use FTC's existing database rather than create a new database of complaints. The amendment calls on the Commissioners of CFPC to appear before the appropriate committees of Congress s requested to discuss the efforts, activities, objectives, and plans of CFPC, whereas the bill reported out of Financial Services had the agency head only testify before the Financial Services Committee. The amendment further adds language requiring CFPC to coordinate with FTC along with other federal and state regulators, and to consult with FTC on developing report requirements for non-depository institutions. Furthermore, the manager's amendment added language regarding FTC's ability to enforce against those that give substantial assistance to others who commit unfair or deceptive acts to ensure that that new authority not supersede the Communications Decency Act. Finally, it makes clear that the transfer of authorities language does not trigger the automatic transfer of staff in 5 U.S.C. section 3503, and makes technical changes to this section and other sections to comport with the changes to the "transfer of functions" language that were made in the Committee on Financial Services.

Chairman Waxman's amendment, accepted by a division vote of 19–17, adds a new subsection 210(d) that provides FTC with the authority to seek civil penalties in enforcement actions without first referring those actions to the Department of Justice.

Rep. Scalise offered an amendment, which passed by a voice vote, adding a new section 118A that calls on the Government Accountability Office to examine the effects of CFPC regulation on small businesses.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, in order to expedite the business of the House of Representatives, it is necessary to dispense with the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives (relating to showing changes in existing law made by the bill as reported).

DISSENTING VIEWS

We, the undersigned Members of the Committee on Energy and Commerce, submit the following comments on H.R. 3126 to express our concerns with the amending language that creates the Consumer Financial Protection Agency and modifies the responsibilities of the Federal Trade Commission.

Since the global financial crisis that began in the spring of 2007 and peaked in the fall of 2008 with the collapse of Lehman Brothers and AIG, the government takeover of Fannie Mae and Freddie Mac, and numerous bank failures, many proposals have been put forward to avert another future market crisis.

In addition to these new proposals to address systemic risk, others have sought to address unrelated practices or industries in the name of reform. Any ills that contributed to the financial crisis have become the Obama Administration's raison d'être for creating a new super consumer protection regulatory agency, the Consumer Financial Protection Agency (CFPA).

Rather than address the failure of banking regulations related to consumer protection and the failure of the States to police activities under their purview (e.g., mortgage brokers and real estate agents), the proposed legislation to create the CFPA seeks to consolidate the consumer protection jurisdiction of all banking regulators into one new agency and regulate many new activities and persons that largely are unrelated to the financial markets or the crisis of 2008.

A new regulatory body with authority this sweeping in nature cannot be evaluated properly unless its proponents first define clearly what problems they are seeking to address. The major problems in the financial markets and home foreclosures trumpeted so far would focus the legislation on the following financial products: mortgages and credit cards. Yet the Congress passed sweeping changes to address credit card abuses at the beginning of this Congress and new regulations for mortgages and the securities markets are forthcoming.

While changes in regulation of mortgages and securities markets are warranted, it is a far different matter to propose a regulator with authority over nearly every sector of the economy to improve consumer protection. Simply put, the evidence is lacking to support the need for a new super regulator for all consumer financial activities.

Examining the reasons behind the housing bubble and subsequent collapse, Congress must admit its own mistakes, including policies that have contributed to the housing bubble and subsequent implosion. Fannie Mae and Freddie Mac had long been criticized for their failure to adhere to the same standards and practices the private sector had to follow. With the implicit guarantee of the Federal government, which became an explicit guarantee once they were placed in receivership, Fannie Mae and Freddie

Mac were able to fund themselves at lower costs than their competitors and gain substantial market share. In essence, they were chosen by the government to be a winner and responded as one might expect, by wielding their political influence to avoid the further regulation that was called for by many Republicans. Yet they did not have to follow the same securities regulatory requirements their competitors did. Not surprisingly, they needed more scrutiny when they were found to have misstated and manipulated their earnings. It is now ironic that many Democrats did not call for more regulatory scrutiny over Fannie Mae and Freddie Mac as problems emerged—problems that are now costing taxpayers tens of billions of dollars—but wanted instead to continue to expand the policy of Federal government intervention into the housing market through additional incentives and taxpayer-supported subsidies to homebuyers.

Easy credit and lack of savings combined to create an environment where many mortgage products designed to be "affordable" emerged that could quickly be sold off to Fannie Mae or Freddie Mac. And with Congress and previous Administrations encouraging Fannie and Freddie to be more flexible with their standards and purchase more mortgages of riskier quality, taxpayers were put on the hook for more and more liabilities of these failed institutions. Rather than addressing this agency problem, the Democrat Majority's policy response seems to be to keep Fannie and Freddie subsidized by the taxpayers, continuing to buy mortgages from originators regardless of their quality. Some have blamed the financial crisis on the presumed private-sector perspective of "privatizing the gains, and socializing the risk," but none fit this model more than Fannie Mae and Freddie Mac. Unfortunately, taxpayers will be paying for the losses for years to come and potentially paying for an impending bailout of the Federal Housing Administration. None of these problems will be solved by the proposals put forward.

TITLE I, CONSUMER FINANCIAL PROTECTION AGENCY

We support the goal of protecting consumers against fraud and deceptive practices but disagree wholeheartedly with the creation of a Consumer Financial Protection Agency. While we feel that the change from a single Director to a bipartisan Commission (the Consumer Financial Protection Commission (CFPC)) improves the legislation, we understand the Majority will have an amendment made in order for Floor consideration that will return the Director for an interim period of two years, after which the Director will become the Chairperson of the five member Commission. This is unacceptable and a disappointing change for anyone concerned with enacting a credible structure of governance. The creation of the Commission will benefit governance, hold the Agency more accountable, and ensure a more deliberative process in its decision-making, especially given the nearly limitless authority given to the Commission to determine what will be considered consumer financial activities and subject to the Commission's authority.

However, we do not need another "czar" empowered to control the economy with little or no accountability.

While the current jurisdiction of the Federal Trade Commission (FTC) is preserved in the drafted legislation, we remain concerned

that the structure of dual jurisdiction and dual enforcement will be problematic and burdensome for regulated entities. It is questionable whether a brand new agency with new staff who have no experience regulating the entities currently under FTC jurisdiction can do a better job than the FTC. It is our belief the CFPC will not and therefore should not be given dual jurisdiction.

Of the many other objectionable provisions, the scope of CFPC authority is particularly troubling. A super regulator that will be in charge of nearly every sector of the economy, including entities that have otherwise never engaged in the sale of a financial product or service but will now find themselves under multiple jurisdictions, is a recipe for disaster, is unwarranted, and is an overreach of an overactive government.

Under the legislation, the Commission will have jurisdiction over any person it deems, by rule, to be a covered person. The definitions for "financial activity" and "financial product or service" are so broad and permissive that a financial activity can be defined in any manner the Commission deems appropriate. Of particular concern is the open-ended nature of section 101(19)(P), which permits the definition to be expanded to any activity the Commission finds will have or is likely to have a material adverse impact on the creditworthiness or financial well being of consumers. Under this open-ended authority and a simple common-sense reading of the language, there is no doubt that activities such as marriage, divorce, having a child, or even the purchase of a big screen TV could be determined to be a financial activity. Additionally, the definition permits the Commission to determine any other activity that is incidental or complementary to any other financial activity to be a financial activity. Either of these authorities will permit unlimited authority.

Notwithstanding the specific exemptions for particular industries or professions enumerated in the legislation, it appears the exemptions only apply if the Commission chooses to observe Congressional intent regarding the exemptions provided. If on the other hand the Commission decides to determine those activities or persons covered, there appears no impediment to stop the Commission from making such a determination. This authority undermines every exclusion provided in the bill for non-financial activities if the Director or Commission can simply re-define the excluded activities back within the CFPC's jurisdiction under this catch-all provision.

We are equally concerned about the approach to regulation. Currently, the broad range of statutes and regulations the CFPC can enforce only creates a floor for financial consumer regulations. If the goal is to create an effective new Federal regulator, it only makes sense to ensure their authority is not undermined. As a candidate, President Obama said that "we need to streamline a framework of overlapping and competing regulatory agencies." As the bill is currently written, it does just the opposite, allowing and encouraging the growth of up to 50 different State regulatory fiefdoms, in addition to dual Federal regulation. This directly contradicts the President's statements. If the States will be authorized to enforce the Federal laws (as they are in this proposal), we do not see the value in permitting them to write State laws that go beyond the

Federal law unless the goal is to increase regulatory costs and create confusion and inconsistencies. That will only ensure that compliance costs increase as more lawyers are hired, resulting in lower job growth in the rest of the economy. Already, regulatory burdens impose mounting costs on the Nation's businesses, both small and large. According to the Small Business Administration, businesses with less than 20 employees spend more than $7,600 a year per employee in order to comply with Federal regulations. Businesses with over 500 employees spend almost $5,300 per employee in regulatory compliance. This bill will only raise those costs.

Similarly, the approach to enforcement is of great concern. H.R. 3126 gives unprecedented new financial regulatory authority to a single agency. The CFPC's broad regulatory jurisdiction would affect nearly every area of the economy, and the new agency would have independent litigating authority to bring actions for violations. Centralizing so much authority and control in one Federal agency is cause enough for concern, but granting 51 Attorneys General enforcement powers over this exceptionally broad jurisdiction is cause for serious alarm. Covered entities will be subject to the enforcement discretion of the FTC, the CFPC, and potentially 51 Attorneys General who can all seek civil penalties. We believe this will not result in greater consumer protection, but rather will increase litigation-averse behavior by businesses that may ultimately harm and confuse consumers.

Finally, we object to the inclusion of a new undefined and subjective standard for violations. The term "abusive" expands the known standards of "unfair or deceptive" and the Commission is left to its own devices in determining its meaning. Therefore, any covered person will face great uncertainty as to how the Commission will interpret and enforce this standard as he or she tries to operate a business. By including such an undefined and elastic standard, the potential for unlimited regulation and enforcement goes up substantially.

Closely related to this standard, the CFPC is given "unfairness" rulemaking authority which is inconsistent with and clearly goes far beyond the similar authority provided to the FTC under current law. The FTC's authority was tied to section 5(n) of the Federal Trade Commission Act (FTC Act), and the FTC has no authority to declare an act or practice unlawful on the grounds that it is unfair unless: "the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the FTC may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination." The ability to utilize this highly elastic concept without the restrictions of section 5(n) of the FTC Act will compound the problems associated with the inherent vagueness and elusiveness of the definition of "unfairness."

TITLE II, FTC IMPROVEMENTS

Under section 201, the FTC is given authority to conduct across-the-board rulemakings under the expedited Administrative Procedures Act (APA), rather than under the present Magnuson-Moss

rulemaking procedures. Congress instituted the Magnuson-Moss rulemaking procedures in the 1970s due to its growing concern that the FTC, which at the time was carrying out multiple wide-ranging concurrent rulemakings, should be required to carry out more structured rulemaking procedures. In light of the Commission's extremely broad powers over vast segments of the nation's economy, Congress, at that time, believed that expedited rulemaking authority (180 days) could lead to a serious "rush to judgment", allowing the FTC to make major, industry-wide regulatory changes without adequate time for industry input and thoughtful consideration.

History repeats itself and provides an instructive lesson as to why the Magnusson-Moss requirements were enacted by a Democrat-majority Congress three decades ago. At that time Congress recognized the FTC had jurisdiction over all commercial activities that were not specifically excluded. This broad jurisdiction was given to the FTC knowing it could not be expected to be an expert for every industry. Keeping current with industry developments for every sector of the economy is an unrealistic expectation.

Current rulemaking proposals indicate the FTC may be headed off track again. FTC has noticed a proposed rule regarding debt relief services under APA rulemaking procedures using its alleged authority under the Telemarketing Abuse and Prevention Act. While we withhold our position on the merits of the proposed rule, the process used to issue it raises concerns. The industry is segmented between for-profit and non-profit businesses. Yet the proposed rule can only reach those entities under the FTC's jurisdiction—meaning it will not apply to non-profits and will affect only 20 percent of the industry that operates for profit. The proposed rule takes the extreme position of banning the advance fee compensation model of the for-profit entities. Given that over 85 percent of the debt relief industry is occupied by non-profits—which the FTC has no information on and no jurisdiction over—it is not clear on what basis it is proposing the rule. Additionally, it is not clear whether the FTC in this rulemaking has weighed the competitive effects or whether changes will help consumers if it drives out the for-profit providers and creates a monopoly for the non-profits. At the very least, this is not a complete record. Congress should ensure that the rules the FTC promulgates are based upon a complete record of all the facts and information.

In fact, there has been no showing that the Magnuson-Moss requirements have hindered the FTC from carrying out a rulemaking it wished to pursue.

It is true that Congress has given the Commission APA rulemaking authority under specific statutes, such as the Children's Online Privacy Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and others. However, those delegations came only after extensive hearings and an opportunity for industry input. That has not happened in this case. Also, those Acts include well-defined and specific standards for the Commission to enforce. In fact, the expansion of APA rulemaking authority in H.R. 3126 applies to the entire scope of the broad, general powers of the FTC to regulate false, deceptive or unfair acts or practices over virtually every segment of commerce.

Mr. Timothy Muris, who served as Chairman of the FTC from 2001 to 2004, testified at a July 14, 2009, hearing of the U.S. Senate Commerce Committee Subcommittee on Consumer Protection, Product Safety, and Insurance to strongly urge the Congress to retain the Magnuson-Moss rulemaking procedures at the FTC. Muris stated:

"The administration's proposal would do more than just change the procedures used in rulemaking. It also would eliminate the requirement that unfair or deceptive practices must be prevalent, and eliminate the requirement for the Commission's Statement of Basis and Purpose to address the economic effect of the rule. It also changes the standard for judicial review, eliminating the court's ability to strike down rules that are not supported by substantial evidence in the rulemaking record taken as a whole. The current restrictions on Commissioners' meetings with outside parties and the prohibition on ex parte communications with Commissioners also are eliminated. These sensible and important protections should be retained."

The FTC is not an agency that has specific subject matter expertise over a particular area of the economy, such as the SEC, the CFTA, or the EPA. Therefore, it is more important for the agency to follow the detailed and focused procedures of Magnuson-Moss rulemaking procedures when carrying out an industry-wide rulemaking.

There are a number of procedural safeguards in Magnuson-Moss that are important and should be preserved. These safeguards include the following requirements: (a) the Commission must identify a pattern of activity—a prevalence, as opposed to one instance—before engaging in a rulemaking; (b) a rule may be overturned by the courts if it is not supported by substantial evidence taken as a whole; and, (c) the Commission provide a statement as to the economic effect of the rulemaking. All of these protections are presently being abrogated by H.R. 3126. They are all sensible requirements and there is no reason to believe that these rules will hinder the FTC in forceful rulemaking.

We do not find the argument that all other Executive Branch agencies may promulgate rules pursuant to APA particularly relevant. No other agency has the breadth of jurisdiction of the FTC, and therefore, comparing these many different agencies' authorities and procedures is inappropriate and misleading.

We believe the example of the speed with which the Consumer Product Safety Improvement Act of 2008 (CPSIA) and the resulting unforeseen consequences on the law is illustrative of the potential problem with this grant of fast-track rulemaking. While that legislation was founded upon the best of intentions—and while it was limited to what we then considered a relatively limited portion of industry (the world of children's products)—we have observed the unforeseen impact on thousands of businesses. Unfortunately, many of these unintended consequences could have been avoided had the affected industries had an opportunity to submit comments. No one was excluded from that legislative process; however, because CPSIA moved from legislation to law in under one year, there was not sufficient time for downstream manufacturers and retailers to become aware of CPSIA's proposals and thus weigh in.

We do not believe it is a stretch of the imagination to extrapolate the example of CPSIA by a multiple factor. The FTC's rules on commerce reach from Wall Street to Main Street, with the former dedicating full-time staff to monitoring and commenting upon Congressional action while the latter has no such resources.

Further, we note this Committee's history of granting the FTC APA rulemaking for particular issues. That ad hoc approach ensures the appropriate amount of Congressional oversight for an Executive Branch body with the breadth and reach as the FTC. This history also illustrates that the Commission's argument for more responsive rulemaking authority is not without at least some merit in certain contexts. As an alternative to fast track rulemaking power, however, we proposed an alternative that blended both rulemaking approaches. It would permit the quicker, more flexible rulemaking approach of the APA but mandate certain extra procedures to make such a process more deliberative. We remain strong supporters of this approach versus general APA rulemaking authority, particularly if general civil penalty authority is provided to the FTC. We also believe this model should be extended to the new CFPC given its similar expansive authority.

Finally, as mentioned above, we do not believe the FTC requires both general civil penalty authority and general rulemaking authority. The Commission's primary justification for requesting APA rulemaking is so that it may be more responsive to fraudulent or unfair or deceptive activities in the marketplace. With a faster rulemaking process, there is no justification for empowering the FTC to impose civil penalties on someone who has no notice that his or her conduct is illegal. If the activity of concern is of such magnitude as to harm consumers on a wide scale, the FTC may simply issue a cease and desist order while undertaking a rulemaking under APA. In granting the FTC civil penalty authority, there is no need for fast track rulemaking. We vociferously oppose granting the FTC both of these powers.

The Civil Penalties section 201(a) dramatically changes the regulatory powers of the FTC by providing a sweeping scope of authority the Commission has never had since its inception in 1914. Under current law, the FTC may only seek civil penalties where the party in question is on notice that his or her conduct is unlawful, unfair, or deceptive. A party is considered on notice where there is an existing rule clearly defining conduct that is permitted, or, alternatively, where the Commission issued a formal cease and desist order in instances where no law or regulation exists to clearly define permissible and impermissible conduct.

H.R. 3126 grants the FTC general civil penalty authority under its section 5 unfair or deceptive acts or practices standard. Under current law, the standard remedy for an initial violation of the FTC Act is a cease and desist order. The FTC can pursue monetary penalties only for violations of FTC rules or cease and desist orders.

Under the authority provided in H.R. 3126, the FTC can now seek monetary penalties for unfair or deceptive acts or practices even if the party in question is not on notice that his or her conduct is unlawful because there is not a specific rule addressing the act in question. Unfortunately, the concept of unfair or deceptive acts or practices is similar to Justice Potter Stewart's famous "I know it when I see it" standard. This means individuals, small

businesses, and other companies will be subject to what is essentially a strict liability standard for undefined conduct. In our view, where strict liability is warranted, that conduct should be as well-defined as in other areas of the law where strict liability is mandated. With the current civil penalty authority at $16,000 per violation, with each day considered a new violation, honest companies and small businesses that have no idea that the FTC considers their conduct unfair will be subject to potentially crippling fines reaching into the thousands—and perhaps millions—of dollars.

Finally, perhaps most significantly, and as aforementioned, it is our view that if Congress grants the FTC general rulemaking authority under the APA, general civil penalty authority is unnecessary. If the argument for APA rulemaking authority is for quicker, more responsive rulemaking ability, the Commission will have the ability to put parties on notice of unlawful conduct by promulgating rules in just months in most cases. Combining these two new authorities is a dangerous proposition that flies in the face of any notion of fairness and could result in exactly what the Commission seeks to redress—unfair practices, but unfair practices undertaken by the Commission. In granting the FTC general civil penalty authority—and thereby the ability to seek civil penalties in the absence of placing "bad" actors on notice of their unfair or deceptive conduct—we essentially dispense with the need for rulemaking authority altogether.

The Aiding and Abetting section 201(b) creates a new aiding and abetting violation within section 5 of the FTC Act. The language lowers the standard for aiding and abetting beneath the existing standard for other violations of section 5: it will be unlawful to knowingly or recklessly provide substantial assistance. The law currently requires the FTC to establish independent culpability of third parties under section 5. This change would import criminal law concepts into a civil statute.

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