

1 nanced from the proceeds of the transaction), if
2 known, and the replacement costs of the prop-
3 erty for hazard insurance, in the initial year
4 after the transaction.”.

5 **Subtitle F—Appraisal Activities**

6 **SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.**

7 Chapter 2 of the Truth in Lending Act (15 U.S.C.
8 1631 et seq.) is amended by inserting after 129G (as
9 added by section 9404(b)) the following new section:

10 **“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.**

11 “(a) IN GENERAL.—A creditor may not extend credit
12 in the form of a subprime mortgage to any consumer with-
13 out first obtaining a written appraisal of the property to
14 be mortgaged prepared in accordance with the require-
15 ments of this section.

16 “(b) APPRAISAL REQUIREMENTS.—

17 “(1) PHYSICAL PROPERTY VISIT.—An appraisal
18 of property to be secured by a subprime mortgage
19 does not meet the requirement of this section unless
20 it is performed by a qualified appraiser who con-
21 ducts a physical property visit of the interior of the
22 mortgaged property.

23 “(2) SECOND APPRAISAL UNDER CERTAIN CIR-
24 CUMSTANCES.—

1 “(A) IN GENERAL.—If the purpose of a
2 subprime mortgage is to finance the purchase
3 or acquisition of the mortgaged property from
4 a person within 180 days of the purchase or ac-
5 quisition of such property by that person at a
6 price that was lower than the current sale price
7 of the property, the creditor shall obtain a sec-
8 ond appraisal from a different qualified ap-
9 praiser. The second appraisal shall include an
10 analysis of the difference in sale prices, changes
11 in market conditions, and any improvements
12 made to the property between the date of the
13 previous sale and the current sale.

14 “(B) NO COST TO APPLICANT.—The cost
15 of any second appraisal required under sub-
16 paragraph (A) may not be charged to the appli-
17 cant.

18 “(3) QUALIFIED APPRAISER DEFINED.—For
19 purposes of this section, the term ‘qualified ap-
20 praiser’ means a person who—

21 “(A) is, at a minimum, certified or licensed
22 by the State in which the property to be ap-
23 praised is located; and

24 “(B) performs each appraisal in con-
25 formity with the Uniform Standards of Profes-

1 sional Appraisal Practice and title XI of the Fi-
2 nancial Institutions Reform, Recovery, and En-
3 forcement Act of 1989, and the regulations pre-
4 scribed under such title, as in effect on the date
5 of the appraisal.

6 “(c) FREE COPY OF APPRAISAL.—A creditor shall
7 provide 1 copy of each appraisal conducted in accordance
8 with this section in connection with a subprime mortgage
9 to the applicant without charge, and at least 3 days prior
10 to the transaction closing date.

11 “(d) CONSUMER NOTIFICATION.—At the time of the
12 initial mortgage application, the applicant shall be pro-
13 vided with a statement by the creditor that any appraisal
14 prepared for the mortgage is for the sole use of the cred-
15 itor, and that the applicant may choose to have a separate
16 appraisal conducted at their own expense.

17 “(e) VIOLATIONS.—In addition to any other liability
18 to any person under this title, a creditor found to have
19 willfully failed to obtain an appraisal as required in this
20 section shall be liable to the applicant or borrower for the
21 sum of \$2,000.

22 “(f) SUBPRIME MORTGAGE DEFINED.—For purposes
23 of this section, the term ‘subprime mortgage’ means a res-
24 idential mortgage loan, other than a reverse mortgage loan
25 insured by the Federal Housing Administration, secured

1 by a principal dwelling with an annual percentage rate
2 that exceeds the average prime offer rate for a comparable
3 transaction, as of the date the interest rate is set—

4 “(1) by 1.5 or more percentage points, in the
5 case of a first lien residential mortgage loan having
6 an original principal obligation amount that does not
7 exceed the amount of the maximum limitation on the
8 original principal obligation of mortgage in effect for
9 a residence of the applicable size, as of the date of
10 such interest rate set, pursuant to the sixth sentence
11 of section 305(a)(2) the Federal Home Loan Mort-
12 gage Corporation Act (12 U.S.C. 1454(a)(2));

13 “(2) by 2.5 or more percentage points, in the
14 case of a first lien residential mortgage loan having
15 an original principal obligation amount that exceeds
16 the amount of the maximum limitation on the origi-
17 nal principal obligation of mortgage in effect for a
18 residence of the applicable size, as of the date of
19 such interest rate set, pursuant to the sixth sentence
20 of section 305(a)(2) the Federal Home Loan Mort-
21 gage Corporation Act (12 U.S.C. 1454(a)(2)); and

22 “(3) by 3.5 or more percentage points for a
23 subordinate lien residential mortgage loan.”.

1 **SEC. 9502. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
2 **RELATING TO CERTAIN CONSUMER CREDIT**
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
6 after section 129D (as added by section 9401(a)) the fol-
7 lowing new section:

8 **“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
9 **RELATING TO CERTAIN CONSUMER CREDIT**
10 **TRANSACTIONS.**

11 “(a) IN GENERAL.—It shall be unlawful, in extending
12 credit or in providing any services for a consumer credit
13 transaction secured by the principal dwelling of the con-
14 sumer, to engage in any unfair or deceptive act or practice
15 as described in or pursuant to regulations prescribed
16 under this section.

17 “(b) APPRAISAL INDEPENDENCE.—For purposes of
18 subsection (a), unfair and deceptive practices shall in-
19 clude—

20 “(1) any appraisal of a property offered as se-
21 curity for repayment of the consumer credit trans-
22 action that is conducted in connection with such
23 transaction in which a person with an interest in the
24 underlying transaction compensates, coerces, extorts,
25 colludes, instructs, induces, bribes, or intimidates a
26 person conducting or involved in an appraisal, or at-

1 tempts, to compensate, coerce, extort, collude, in-
2 struct, induce, bribe, or intimidate such a person,
3 for the purpose of causing the appraised value as-
4 signed, under the appraisal, to the property to be
5 based on any factor other than the independent
6 judgment of the appraiser;

7 “(2) mischaracterizing, or suborning any
8 mischaracterization of, the appraised value of the
9 property securing the extension of the credit;

10 “(3) seeking to influence an appraiser or other-
11 wise to encourage a targeted value in order to facili-
12 tate the making or pricing of the transaction; and

13 “(4) withholding or threatening to withhold
14 timely payment for an appraisal report or for ap-
15 praisal services rendered.

16 “(c) EXCEPTIONS.—The requirements of subsection
17 (b) shall not be construed as prohibiting a mortgage lend-
18 er, mortgage broker, mortgage banker, real estate broker,
19 appraisal management company, employee of an appraisal
20 management company, consumer, or any other person
21 with an interest in a real estate transaction from asking
22 an appraiser to provide 1 or more of the following services:

23 “(1) Consider additional, appropriate property
24 information, including the consideration of addi-

1 tional comparable properties to make or support an
2 appraisal.

3 “(2) Provide further detail, substantiation, or
4 explanation for the appraiser’s value conclusion.

5 “(3) Correct errors in the appraisal report.

6 “(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—

7 No certified or licensed appraiser conducting, and no ap-
8 praisal management company procuring or facilitating, an
9 appraisal in connection with a consumer credit transaction
10 secured by the principal dwelling of a consumer may have
11 a direct or indirect interest, financial or otherwise, in the
12 property or transaction involving the appraisal.

13 “(e) MANDATORY REPORTING.—Any mortgage lend-
14 er, mortgage broker, mortgage banker, real estate broker,
15 appraisal management company, employee of an appraisal
16 management company, or any other person involved in a
17 real estate transaction involving an appraisal in connection
18 with a consumer credit transaction secured by the prin-
19 cipal dwelling of a consumer who has a reasonable basis
20 to believe an appraiser is failing to comply with the Uni-
21 form Standards of Professional Appraisal Practice, is vio-
22 lating applicable laws, or is otherwise engaging in uneth-
23 ical or unprofessional conduct, shall refer the matter to
24 the applicable State appraiser certifying and licensing
25 agency.

1 “(f) NO EXTENSION OF CREDIT.—In connection with
2 a consumer credit transaction secured by a consumer’s
3 principal dwelling, a creditor who knows, at or before loan
4 consummation, of a violation of the appraisal independ-
5 ence standards established in subsections (b) or (d) shall
6 not extend credit based on such appraisal unless the cred-
7 itor documents that the creditor has acted with reasonable
8 diligence to determine that the appraisal does not materi-
9 ally misstate or misrepresent the value of such dwelling.

10 “(g) RULEMAKING PROCEEDINGS.—The Board, the
11 Comptroller of the Currency, the Director of the Office
12 of Thrift Supervision, the Federal Deposit Insurance Cor-
13 poration, the National Credit Union Administration
14 Board, and the Federal Trade Commission—

15 “(1) shall, for purposes of this section, jointly
16 prescribe regulations no later than 180 days after
17 the date of the enactment of this section, and where
18 such regulations have an effective date of no later
19 than 1 year after the date of the enactment of this
20 section, defining with specificity acts or practices
21 which are unfair or deceptive in the provision of
22 mortgage lending services for a consumer credit
23 transaction secured by the principal dwelling of the
24 consumer or mortgage brokerage services for such a

1 transaction and defining any terms in this section or
2 such regulations; and

3 “(2) may jointly issue interpretive guidelines
4 and general statements of policy with respect to un-
5 fair or deceptive acts or practices in the provision of
6 mortgage lending services for a consumer credit
7 transaction secured by the principal dwelling of the
8 consumer and mortgage brokerage services for such
9 a transaction, within the meaning of subsections (a),
10 (b), (c), (d), (e), and (f).

11 “(h) PENALTIES.—

12 “(1) FIRST VIOLATION.—In addition to the en-
13 forcement provisions referred to in section 130, each
14 person who violates this section shall forfeit and pay
15 a civil penalty of not more than \$10,000 for each
16 day any such violation continues.

17 “(2) SUBSEQUENT VIOLATIONS.—In the case of
18 any person on whom a civil penalty has been im-
19 posed under paragraph (1), paragraph (1) shall be
20 applied by substituting ‘\$20,000’ for ‘\$10,000’ with
21 respect to all subsequent violations.

22 “(3) ASSESSMENT.—The agency referred to in
23 subsection (a) or (c) of section 108 with respect to
24 any person described in paragraph (1) shall assess

1 any penalty under this subsection to which such per-
2 son is subject.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 2 of the Truth in Lending Act is amended
5 by inserting after the item relating to section 129D (as
6 added by section 9401(c)) the following new item:

“129E. Unfair and deceptive practices and acts relating to certain consumer
credit transactions.”.

7 **SEC. 9503. AMENDMENTS RELATING TO APPRAISAL SUB-**
8 **COMMITTEE OF FIEC, APPRAISER INDEPEND-**
9 **ENCE MONITORING, APPROVED APPRAISER**
10 **EDUCATION, APPRAISAL MANAGEMENT COM-**
11 **PANIES, APPRAISER COMPLAINT HOTLINE,**
12 **AUTOMATED VALUATION MODELS, AND**
13 **BROKER PRICE OPINIONS.**

14 (a) CONSUMER PROTECTION MISSION.—

15 (1) PURPOSES.—Section 1101 of the Financial
16 Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3331) is amended by inserting
18 “and to provide the Appraisal Subcommittee with a
19 consumer protection mandate” before the period at
20 the end.

21 (2) FUNCTIONS OF APPRAISAL SUB-
22 COMMITTEE.—Section 1103(a) of the Financial In-
23 stitutions Reform, Recovery, and Enforcement Act
24 of 1989 (12 U.S.C. 3332(a)) is amended—

1 (A) by striking “and” at the end of para-
2 graph (3); and

3 (B) by amending paragraph (4) to read as
4 follows:

5 “(4) monitor the efforts of, and requirements
6 established by, States and the Federal financial in-
7 stitutions regulatory agencies to protect consumers
8 from improper appraisal practices and the preda-
9 tions of unlicensed appraisers in consumer credit
10 transactions that are secured by a consumer’s prin-
11 cipal dwelling; and”.

12 (3) THRESHOLD LEVELS.—Section 1112(b) of
13 the Financial Institutions Reform, Recovery, and
14 Enforcement Act of 1989 (12 U.S.C. 3341(b)) is
15 amended by inserting before the period the fol-
16 lowing: “, and that such threshold level provides rea-
17 sonable protection for consumers who purchase 1–4
18 unit single-family residences. In determining whether
19 a threshold level provides reasonable protection for
20 consumers, each Federal financial institutions regu-
21 latory agency shall consult with consumer groups
22 and convene a public hearing”.

23 (b) ANNUAL REPORT OF APPRAISAL SUB-
24 COMMITTEE.—Section 1103(a) of the Financial Institu-
25 tions Reform, Recovery, and Enforcement Act of 1989 (12

1 U.S.C. 3332(a)) is amended at the end by inserting the
2 following new paragraph:

3 “(5) transmit an annual report to the Congress
4 not later than January 31 of each year that de-
5 scribes the manner in which each function assigned
6 to the Appraisal Subcommittee has been carried out
7 during the preceding year. The report shall also de-
8 tail the activities of the Appraisal Subcommittee, in-
9 cluding the results of all audits of State appraiser
10 regulatory agencies, and provide an accounting of
11 disapproved actions and warnings taken in the pre-
12 vious year, including a description of the conditions
13 causing the disapproval and actions taken to achieve
14 compliance.”.

15 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
16 cial Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3333(b)) is amended by inserting “in
18 public session after notice in the Federal Register” after
19 “shall meet”.

20 (d) REGULATIONS.—Section 1106 of the Financial
21 Institutions Reform, Recovery, and Enforcement Act of
22 1989 (12 U.S.C. 3335) is amended—

23 (1) by inserting “prescribe regulations after no-
24 tice and opportunity for comment,” after “hold
25 hearings”; and

1 (2) at the end by inserting “Any regulations
2 prescribed by the Appraisal Subcommittee shall (un-
3 less otherwise provided in this title) be limited to the
4 following functions: temporary practice, national reg-
5 istry, information sharing, and enforcement. For
6 purposes of prescribing regulations, the Appraisal
7 Subcommittee shall establish an advisory committee
8 of industry participants, including appraisers, lend-
9 ers, consumer advocates, and government agencies,
10 and hold meetings as necessary to support the devel-
11 opment of regulations.”.

12 (e) APPRAISALS AND APPRAISAL REVIEWS.—Section
13 1113 of the Financial Institutions Reform, Recovery, and
14 Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

15 (1) by striking “In determining” and inserting
16 “(a) IN GENERAL.—In determining”;

17 (2) in subsection (a) (as designated by para-
18 graph (1)), by inserting before the period the fol-
19 lowing: “, where a complex 1-to-4 unit single family
20 residential appraisal means an appraisal for which
21 the property to be appraised, the form of ownership,
22 the property characteristics, or the market condi-
23 tions are atypical”; and

24 (3) by adding at the end the following new sub-
25 section:

1 “(b) APPRAISALS AND APPRAISAL REVIEWS.—All ap-
2 praisals performed at a property within a State shall be
3 prepared by appraisers licensed or certified in the State
4 where the property is located. All appraisal reviews, in-
5 cluding appraisal reviews by a lender, appraisal manage-
6 ment company, or other third party organization, shall be
7 performed by an appraiser who is duly licensed or certified
8 by a State appraisal board.”.

9 (f) APPRAISAL MANAGEMENT SERVICES.—

10 (1) SUPERVISION OF THIRD PARTY PROVIDERS
11 OF APPRAISAL MANAGEMENT SERVICES.—Section
12 1103(a) of the Financial Institutions Reform, Recov-
13 ery, and Enforcement Act of 1989 (12 U.S.C.
14 3332(a)) (as previously amended by this section) is
15 further amended—

16 (A) by amending paragraph (1) to read as
17 follows:

18 “(1) monitor the requirements established by
19 States—

20 “(A) for the certification and licensing of
21 individuals who are qualified to perform ap-
22 praisals in connection with federally related
23 transactions, including a code of professional
24 responsibility; and

1 “(1) register with and be subject to supervision
2 by a State appraiser certifying and licensing agency
3 in each State in which such company operates;

4 “(2) verify that only licensed or certified ap-
5 praisers are used for federally related transactions;

6 “(3) require that appraisals coordinated by an
7 appraisal management company comply with the
8 Uniform Standards of Professional Appraisal Prac-
9 tice; and

10 “(4) require that appraisals are conducted inde-
11 pendently and free from inappropriate influence and
12 coercion pursuant to the appraisal independence
13 standards established under section 129E of the
14 Truth in Lending Act.

15 “(b) EXCEPTION FOR FEDERALLY REGULATED FI-
16 NANCIAL INSTITUTIONS.—The requirements of subsection
17 (a) shall not apply to an appraisal management company
18 that is a subsidiary owned and controlled by a financial
19 institution and regulated by a federal financial institution
20 regulatory agency. In such case, the appropriate federal
21 financial institutions regulatory agency shall, at a min-
22 imum, develop regulations affecting the operations of the
23 appraisal management company to—

24 “(1) verify that only licensed or certified ap-
25 praisers are used for federally related transactions;

1 “(2) require that appraisals coordinated by an
2 institution or subsidiary providing appraisal manage-
3 ment services comply with the Uniform Standards of
4 Professional Appraisal Practice; and

5 “(3) require that appraisals are conducted inde-
6 pendently and free from inappropriate influence and
7 coercion pursuant to the appraisal independence
8 standards established under section 129E of the
9 Truth in Lending Act.

10 “(c) REGISTRATION LIMITATIONS.—An appraisal
11 management company shall not be registered by a State
12 if such company, in whole or in part, directly or indirectly,
13 is owned by any person who has had an appraiser license
14 or certificate refused, denied, cancelled, surrendered in
15 lieu of revocation, or revoked in any State. Additionally,
16 each person that owns more than 10 percent of an ap-
17 praisal management company shall be of good moral char-
18 acter, as determined by the State appraiser certifying and
19 licensing agency, and shall submit to a background inves-
20 tigation carried out by the State appraiser certifying and
21 licensing agency.

22 “(d) REGULATIONS.—The Appraisal Subcommittee
23 shall promulgate regulations to implement the minimum
24 qualifications developed by the Appraiser Qualifications
25 Board under this section, as such qualifications relate to

1 the State appraiser certifying and licensing agencies. The
2 Appraisal Subcommittee shall also promulgate regulations
3 for the reporting of the activities of appraisal management
4 companies in determining the payment of the annual reg-
5 istry fee.

6 “(e) EFFECTIVE DATE.—

7 “(1) IN GENERAL.—No appraisal management
8 company may perform services related to a federally
9 related transaction in a State after the date that is
10 36 months after the date of the enactment of this
11 section unless such company is registered with such
12 State or subject to oversight by a federal financial
13 institutions regulatory agency.

14 “(2) EXTENSION OF EFFECTIVE DATE.—Sub-
15 ject to the approval of the Council, the Appraisal
16 Subcommittee may extend by an additional 12
17 months the requirements for the registration and su-
18 pervision of appraisal management companies if it
19 makes a written finding that a State has made sub-
20 stantial progress in establishing a State appraisal
21 management company registration and supervision
22 system that appears to conform with the provisions
23 of this title.”.

24 (3) STATE APPRAISER CERTIFYING AND LI-
25 CENSING AGENCY AUTHORITY.—Section 1117 of the

1 Financial Institutions Reform, Recovery, and En-
2 forcement Act of 1989 (12 U.S.C. 3346) is amended
3 by adding at the end the following: “The duties of
4 such agency may additionally include the registra-
5 tion and supervision of appraisal management com-
6 panies.”.

7 (4) APPRAISAL MANAGEMENT COMPANY DEFINI-
8 TION.—Section 1121 of the Financial Institutions
9 Reform, Recovery, and Enforcement Act of 1989
10 (12 U.S.C. 3350) is amended by adding at the end
11 the following:

12 “(11) APPRAISAL MANAGEMENT COMPANY.—
13 The term ‘appraisal management company’ means,
14 in connection with valuing properties collateralizing
15 mortgage loans or mortgages incorporated into a
16 securitization, any external third party authorized ei-
17 ther by a creditor of a consumer credit transaction
18 secured by a consumer’s principal dwelling or by an
19 underwriter of or other principal in the secondary
20 mortgage markets, that oversees a network or panel
21 of more than 15 certified or licensed appraisers in
22 a State or 25 or more nationally within a given
23 year—

24 “(A) to recruit, select, and retain apprais-
25 ers;

1 “(B) to contract with licensed and certified
2 appraisers to perform appraisal assignments;

3 “(C) to manage the process of having an
4 appraisal performed, including providing admin-
5 istrative duties such as receiving appraisal or-
6 ders and appraisal reports, submitting com-
7 pleted appraisal reports to creditors and under-
8 writers, collecting fees from creditors and un-
9 derwriters for services provided, and reimburs-
10 ing appraisers for services performed; or

11 “(D) to review and verify the work of ap-
12 praisers.”.

13 (g) STATE AGENCY REPORTING REQUIREMENT.—
14 Section 1109(a) of the Financial Institutions Reform, Re-
15 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))
16 is amended—

17 (1) by striking “and” after the semicolon in
18 paragraph (1);

19 (2) by redesignating paragraph (2) as para-
20 graph (4); and

21 (3) by inserting after paragraph (1) the fol-
22 lowing new paragraphs:

23 “(2) transmit reports on sanctions, disciplinary
24 actions, license and certification revocations, and li-
25 cense and certification suspensions on a timely basis

1 to the national registry of the Appraisal Sub-
2 committee;

3 “(3) transmit reports on a timely basis of su-
4 pervisory activities involving appraisal management
5 companies or other third-party providers of apprais-
6 als and appraisal management services, including in-
7 vestigations initiated and disciplinary actions taken;
8 and”.

9 (h) REGISTRY FEES MODIFIED.—

10 (1) IN GENERAL.—Section 1109(a) of the Fi-
11 nancial Institutions Reform, Recovery, and Enforce-
12 ment Act of 1989 (12 U.S.C. 3338(a)) is amend-
13 ed—

14 (A) by amending paragraph (4) (as modi-
15 fied by section 9503(g)) to read as follows:

16 “(4) collect—

17 “(A) from such individuals who perform or
18 seek to perform appraisals in federally related
19 transactions, an annual registry fee of not more
20 than \$40, such fees to be transmitted by the
21 State agencies to the Council on an annual
22 basis; and

23 “(B) from an appraisal management com-
24 pany that either has registered with a State ap-
25 praiser certifying and licensing agency in ac-

1 cordance with this title or operates as a sub-
2 subsidiary of a federally regulated financial institu-
3 tion, an annual registry fee of—

4 “(i) in the case of such a company
5 that has been in existence for more than a
6 year, \$25 multiplied by the number of ap-
7 praisers working for or contracting with
8 such company in such State during the
9 previous year, but where such \$25 amount
10 may be adjusted, up to a maximum of \$50,
11 at the discretion of the Appraisal Sub-
12 committee, if necessary to carry out the
13 Subcommittee’s functions under this title;
14 and

15 “(ii) in the case of such a company
16 that has not been in existence for more
17 than a year, \$25 multiplied by an appro-
18 priate number to be determined by the Ap-
19 praisal Subcommittee, and where such
20 number will be used for determining the
21 fee of all such companies that were not in
22 existence for more than a year, but where
23 such \$25 amount may be adjusted, up to
24 a maximum of \$50, at the discretion of the
25 Appraisal Subcommittee, if necessary to

1 carry out the Subcommittee's functions
2 under this title."; and

3 (B) by amending the matter following
4 paragraph (4), as redesignated, to read as fol-
5 lows:

6 "Subject to the approval of the Council, the Appraisal
7 Subcommittee may adjust the dollar amount of registry
8 fees under paragraph (4)(A), up to a maximum of \$80
9 per annum, as necessary to carry out its functions under
10 this title. The Appraisal Subcommittee shall consider at
11 least once every 5 years whether to adjust the dollar
12 amount of the registry fees to account for inflation. In
13 implementing any change in registry fees, the Appraisal
14 Subcommittee shall provide flexibility to the States for
15 multi-year certifications and licenses already in place, as
16 well as a transition period to implement the changes in
17 registry fees. In establishing the amount of the annual
18 registry fee for an appraisal management company, the
19 Appraisal Subcommittee shall have the discretion to im-
20 pose a minimum annual registry fee for an appraisal man-
21 agement company to protect against the under reporting
22 of the number of appraisers working for or contracted by
23 the appraisal management company."

24 (2) INCREMENTAL REVENUES.—Incremental
25 revenues collected pursuant to the increases required

1 by this subsection shall be placed in a separate ac-
2 count at the United States Treasury, entitled the
3 “Appraisal Subcommittee Account”.

4 (i) GRANTS AND REPORTS.—Section 1109(b) of the
5 Financial Institutions Reform, Recovery, and Enforce-
6 ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

7 (1) by striking “and” after the semicolon in
8 paragraph (3);

9 (2) by striking the period at the end of para-
10 graph (4) and inserting a semicolon;

11 (3) by adding at the end the following new
12 paragraphs:

13 “(5) to make grants to State appraiser certi-
14 fying and licensing agencies to support the efforts of
15 such agencies to comply with this title, including—

16 “(A) the complaint process, complaint in-
17 vestigations, and appraiser enforcement activi-
18 ties of such agencies; and

19 “(B) the submission of data on State li-
20 censed and certified appraisers and appraisal
21 management companies to the National ap-
22 praisal registry, including information affirming
23 that the appraiser or appraisal management
24 company meets the required qualification cri-

1 teria and formal and informal disciplinary ac-
2 tions; and

3 “(6) to report to all State appraiser certifying
4 and licensing agencies when a license or certification
5 is surrendered, revoked, or suspended.”.

6 Obligations authorized under this subsection may not ex-
7 ceed 75 percent of the fiscal year total of incremental in-
8 crease in fees collected and deposited in the “Appraisal
9 Subcommittee Account” pursuant to subsection (h).

10 (j) CRITERIA.—Section 1116 of the Financial Institu-
11 tions Reform, Recovery, and Enforcement Act of 1989 (12
12 U.S.C. 3345) is amended—

13 (1) in subsection (c), by inserting “whose cri-
14 teria for the licensing of a real estate appraiser cur-
15 rently meet or exceed the minimum criteria issued
16 by the Appraisal Qualifications Board of The Ap-
17 praisal Foundation for the licensing of real estate
18 appraisers” before the period at the end; and

19 (2) by striking subsection (e) and inserting the
20 following new subsection:

21 “(e) MINIMUM QUALIFICATION REQUIREMENTS.—
22 Any requirements established for individuals in the posi-
23 tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’
24 shall meet or exceed the minimum qualification require-
25 ments of the Appraiser Qualifications Board of The Ap-

1 praisal Foundation. The Appraisal Subcommittee shall
2 have the authority to enforce these requirements.”.

3 (k) MONITORING OF STATE APPRAISER CERTIFYING
4 AND LICENSING AGENCIES.—Section 1118 of the Finan-
5 cial Institutions Reform, Recovery, and Enforcement Act
6 of 1989 (12 U.S.C. 3347) is amended—

7 (1) by amending subsection (a) to read as fol-
8 lows:

9 “(a) IN GENERAL.—The Appraisal Subcommittee
10 shall monitor each State appraiser certifying and licensing
11 agency for the purposes of determining whether such
12 agency—

13 “(1) has policies, practices, funding, staffing,
14 and procedures that are consistent with this title;

15 “(2) processes complaints and completes inves-
16 tigation in a reasonable time period;

17 “(3) appropriately disciplines sanctioned ap-
18 praisers and appraisal management companies;

19 “(4) maintains an effective regulatory program;
20 and

21 “(5) reports complaints and disciplinary actions
22 on a timely basis to the national registries on ap-
23 praisers and appraisal management companies main-
24 tained by the Appraisal Subcommittee.

1 The Appraisal Subcommittee shall have the authority to
2 remove a State licensed or certified appraiser or a reg-
3 istered appraisal management company from a national
4 registry on an interim basis pending State agency action
5 on licensing, certification, registration, and disciplinary
6 proceedings. The Appraisal Subcommittee and all agen-
7 cies, instrumentalities, and Federally recognized entities
8 under this title shall not recognize appraiser certifications
9 and licenses from States whose appraisal policies, prac-
10 tices, funding, staffing, or procedures are found to be in-
11 consistent with this title. The Appraisal Subcommittee
12 shall have the authority to impose sanctions, as described
13 in this section, against a State agency that fails to have
14 an effective appraiser regulatory program. In determining
15 whether such a program is effective, the Appraisal Sub-
16 committee shall include an analyses of the licensing and
17 certification of appraisers, the registration of appraisal
18 management companies, the issuance of temporary li-
19 censes and certifications for appraisers, the receiving and
20 tracking of submitted complaints against appraisers and
21 appraisal management companies, the investigation of
22 complaints, and enforcement actions against appraisers
23 and appraisal management companies. The Appraisal
24 Subcommittee shall have the authority to impose interim
25 actions and suspensions against a State agency as an al-

1 ternative to, or in advance of, the derecognition of a State
2 agency.”.

3 (2) in subsection (b)(2), by inserting after “au-
4 thority” the following: “or sufficient funding”.

5 (l) RECIPROcity.—Subsection (b) of section 1122 of
6 the Financial Institutions Reform, Recovery, and Enforce-
7 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
8 as follows:

9 “(b) RECIPROcity.—A State appraiser certifying or
10 licensing agency shall issue a reciprocal certification or li-
11 cense for an individual from another State when—

12 “(1) the appraiser licensing and certification
13 program of such other State is in compliance with
14 the provisions of this title; and

15 “(2) the appraiser holds a valid certification
16 from a State whose requirements for certification or
17 licensing meet or exceed the licensure standards es-
18 tablished by the State where an individual seeks ap-
19 praisal licensure.”.

20 (m) CONSIDERATION OF PROFESSIONAL APPRAISAL
21 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
22 tutions Reform, Recovery, and Enforcement Act of 1989
23 (12 U.S.C. 3351(d)) is amended by striking “shall not ex-
24 clude” and all that follows through the end of the sub-
25 section and inserting the following: “may include edu-

1 cation achieved, experience, sample appraisals, and ref-
2 erences from prior clients. Membership in a nationally rec-
3 ognized professional appraisal organization may be a cri-
4 teria considered, though lack of membership therein shall
5 not be the sole bar against consideration for an assign-
6 ment under these criteria.”.

7 (n) APPRAISER INDEPENDENCE.—Section 1122 of
8 the Financial Institutions Reform, Recovery, and Enforce-
9 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
10 at the end the following new subsection:

11 “(g) APPRAISER INDEPENDENCE MONITORING.—
12 The Appraisal Subcommittee shall monitor each State ap-
13 praiser certifying and licensing agency for the purpose of
14 determining whether such agency’s policies, practices, and
15 procedures are consistent with the purposes of maintain-
16 ing appraiser independence and whether such State has
17 adopted and maintains effective laws, regulations, and
18 policies aimed at maintaining appraiser independence.”.

19 (o) APPRAISER EDUCATION.—Section 1122 of the
20 Financial Institutions Reform, Recovery, and Enforce-
21 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
22 ing after subsection (g) (as added by subsection (l) of this
23 section) the following new subsection:

24 “(h) APPROVED EDUCATION.—The Appraisal Sub-
25 committee shall encourage the States to accept courses ap-

1 proved by the Appraiser Qualification Board’s Course Ap-
2 proval Program.”.

3 (p) APPRAISAL COMPLAINT HOTLINE.—Section 1122
4 of the Financial Institutions Reform, Recovery, and En-
5 forcement Act of 1989 (12 U.S.C. 3351), as amended by
6 this section, is further amended by adding at the end the
7 following new subsection:

8 “(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—
9 If, 1 year after the date of the enactment of this sub-
10 section, the Appraisal Subcommittee determines that no
11 national hotline exists to receive complaints of non-compli-
12 ance with appraisal independence standards and Uniform
13 Standards of Professional Appraisal Practice, including
14 complaints from appraisers, individuals, or other entities
15 concerning the improper influencing or attempted im-
16 proper influencing of appraisers or the appraisal process,
17 the Appraisal Subcommittee shall establish and operate
18 such a national hotline, which shall include a toll-free tele-
19 phone number and an email address. If the Appraisal Sub-
20 committee operates such a national hotline, the Appraisal
21 Subcommittee shall refer complaints for further action to
22 appropriate governmental bodies, including a State ap-
23 praiser certifying and licensing agency, a financial institu-
24 tion regulator, or other appropriate legal authorities. For
25 complaints referred to State appraiser certifying and li-

1 censing agencies or to Federal regulators, the Appraisal
2 Subcommittee shall have the authority to follow up such
3 complaint referrals in order to determine the status of the
4 resolution of the complaint.”.

5 (q) **AUTOMATED VALUATION MODELS.**—Title XI of
6 the Financial Institutions Reform, Recovery, and Enforce-
7 ment Act of 1989 (12 U.S.C. 3331 et seq.), as amended
8 by this section, is further amended by adding at the end
9 the following new section (and amending the table of con-
10 tents accordingly):

11 **“SEC. 1125. AUTOMATED VALUATION MODELS USED TO**
12 **VALUE CERTAIN MORTGAGES.**

13 “(a) **IN GENERAL.**—Automated valuation models
14 shall adhere to quality control standards designed to—

15 “(1) ensure a high level of confidence in the es-
16 timates produced by automated valuation models;

17 “(2) protect against the manipulation of data;

18 “(3) seek to avoid conflicts of interest; and

19 “(4) require random sample testing and re-
20 views, where such testing and reviews are performed

21 by an appraiser who is licensed or certified in the
22 State where the testing and reviews take place.

23 “(b) **ADOPTION OF REGULATIONS.**—The Appraisal
24 Subcommittee and its member agencies, in consultation
25 with the Appraisal Standards Board of the Appraisal

1 Foundation and other interested parties, shall promulgate
2 regulations to implement the quality control standards re-
3 quired under this section.

4 “(c) ENFORCEMENT.—Compliance with regulations
5 issued under this subsection shall be enforced by—

6 “(1) with respect to a financial institution, or
7 subsidiary owned and controlled by a financial insti-
8 tution and regulated by a Federal financial institu-
9 tion regulatory agency, the Federal financial institu-
10 tion regulatory agency that acts as the primary Fed-
11 eral supervisor of such financial institution or sub-
12 sidiary; and

13 “(2) with respect to other persons, the Ap-
14 praisal Subcommittee.

15 “(d) AUTOMATED VALUATION MODEL DEFINED.—
16 For purposes of this section, the term ‘automated valu-
17 ation model’ means any computerized model used by mort-
18 gage originators and secondary market issuers to deter-
19 mine the collateral worth of a mortgage secured by a con-
20 sumer’s principal dwelling.”.

21 (f) BROKER PRICE OPINIONS.—Title XI of the Fi-
22 nancial Institutions Reform, Recovery, and Enforcement
23 Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this
24 section, is further amended by adding at the end the fol-

1 lowing new section (and amending the table of contents
2 accordingly):

3 **“SEC. 1126. BROKER PRICE OPINIONS.**

4 “(a) GENERAL PROHIBITION.—In conjunction with
5 the purchase of a consumer’s principal dwelling, broker
6 price opinions may not be used as the primary basis to
7 determine the value of a piece of property for the purpose
8 of a loan origination of a residential mortgage loan se-
9 cured by such piece of property.

10 “(b) BROKER PRICE OPINION DEFINED.—For pur-
11 poses of this section, the term ‘broker price opinion’ means
12 an estimate prepared by a real estate broker, agent, or
13 sales person that details the probable selling price of a
14 particular piece of real estate property and provides a
15 varying level of detail about the property’s condition, mar-
16 ket, and neighborhood, and information on comparable
17 sales, but does not include an automated valuation model,
18 as defined in section 1125(e).”.

19 (s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—
20 Section 1011 of the Federal Financial Institutions Exam-
21 ination Council Act of 1978 (12 U.S.C. 3310) is amend-
22 ed—

23 (1) in the first sentence, by adding before the
24 period the following: “and the Federal Housing Fi-
25 nance Agency”; and

1 (2) by inserting at the end the following: “At
2 all times at least one member of the Appraisal Sub-
3 committee shall have demonstrated knowledge and
4 competence through licensure, certification, or pro-
5 fessional designation within the appraisal profes-
6 sion.”.

7 (t) TECHNICAL CORRECTIONS.—

8 (1) Section 1119(a)(2) of the Financial Institu-
9 tions Reform, Recovery, and Enforcement Act of
10 1989 (12 U.S.C. 3348(a)(2)) is amended by striking
11 “council,” and inserting “Council,”.

12 (2) Section 1121(6) of the Financial Institu-
13 tions Reform, Recovery, and Enforcement Act of
14 1989 (12 U.S.C. 3350(6)) is amended by striking
15 “Corporations,” and inserting “Corporation,”.

16 (3) Section 1121(8) of the Financial Institu-
17 tions Reform, Recovery, and Enforcement Act of
18 1989 (12 U.S.C. 3350(8)) is amended by striking
19 “council” and inserting “Council”.

20 (4) Section 1122 of the Financial Institutions
21 Reform, Recovery, and Enforcement Act of 1989
22 (12 U.S.C. 3351) is amended—

23 (A) in subsection (a)(1) by moving the left
24 margin of subparagraphs (A), (B), and (C) 2
25 ems to the right; and

1 (B) in subsection (c)—

2 (i) by striking “Federal Financial In-
3 stitutions Examination Council” and in-
4 serting “Financial Institutions Examina-
5 tion Council”; and

6 (ii) by striking “the council’s func-
7 tions” and inserting “the Council’s func-
8 tions”.

9 **SEC. 9504. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
10 **PRAISAL PROCESS AND COMPLIANCE PRO-**
11 **GRAMS.**

12 (a) STUDY.—The Comptroller General shall conduct
13 a comprehensive study on possible improvements in the
14 appraisal process generally, and specifically on the consist-
15 ency in and the effectiveness of, and possible improve-
16 ments in, State compliance efforts and programs in ac-
17 cordance with title XI of the Financial Institutions Re-
18 form, Recovery, and Enforcement Act of 1989. In addi-
19 tion, this study shall examine the existing exemptions to
20 the use of certified appraisers issued by Federal financial
21 institutions regulatory agencies. The study shall also re-
22 view the threshold level established by Federal regulators
23 for compliance under title XI and whether there is a need
24 to revise them to reflect the addition of consumer protec-
25 tion to the purposes and functions of the Appraisal Sub-

1 committee. The study shall additionally examine the qual-
2 ity of different types of mortgage collateral valuations pro-
3 duced by broker price opinions, automated valuation mod-
4 els, licensed appraisals, and certified appraisals, among
5 others, and the quality of appraisals provided through dif-
6 ferent distribution channels, including appraisal manage-
7 ment companies, independent appraisal operations within
8 a mortgage originator, and fee-for-service appraisals. The
9 study shall also include an analysis and statistical break-
10 down of enforcement actions taken during the last 10
11 years against different types of appraisers, including cer-
12 tified, licensed, supervisory, and trainee appraisers. Fur-
13 thermore, the study shall examine the benefits and costs,
14 as well as the advantages and disadvantages, of estab-
15 lishing a national repository to collect data related to real
16 estate property collateral valuations performed in the
17 United States.

18 (b) REPORT.—Before the end of the 18-month period
19 beginning on the date of the enactment of this Act, the
20 Comptroller General shall submit a report on the study
21 under subsection (a) to the Committee on Financial Serv-
22 ices of the House of Representatives and the Committee
23 on Banking, Housing, and Urban Affairs of the Senate,
24 together with such recommendations for administrative or

1 legislative action, at the Federal or State level, as the
2 Comptroller General may determine to be appropriate.

3 (c) ADDITIONAL STUDY REQUIRED.—The Comp-
4 troller General shall conduct an additional study to deter-
5 mine the effects that the changes to the seller-guide ap-
6 praisal requirements of Fannie Mae and Freddie Mac con-
7 tained in the Home Valuation Code of Conduct have on
8 small business, like mortgage brokers and independent ap-
9 praisers, and consumers, including the effect on the—

10 (1) quality and costs of appraisals;

11 (2) length of time for obtaining appraisals;

12 (3) impact on consumer protection, especially
13 regarding maintaining appraisal independence, abat-
14 ing appraisal inflation, and mitigating acts of ap-
15 praisal fraud;

16 (4) structure of the appraisal industry, espe-
17 cially regarding appraisal management companies,
18 fee-for-service appraisers, and the regulation of ap-
19 praisal management companies by the states; and

20 (5) impact on mortgage brokers and other small
21 business professionals in the financial services indus-
22 try.

23 (d) ADDITIONAL REPORT.—Before the end of the 6-
24 month period beginning on the date of the enactment of
25 this Act, the Comptroller General shall submit an addi-

1 tional report to the Committee on Financial Services of
2 the House of Representatives and the Committee on
3 Banking, Housing, and Urban Affairs of the Senate con-
4 taining the findings and conclusions of the Comptroller
5 General with respect to the study conducted pursuant to
6 subsection (c). Such additional report shall take into con-
7 sideration the Small Business Administration's views on
8 how small businesses are affected by the Home Valuation
9 Code of Conduct.

10 **SEC. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

11 Subsection (e) of section 701 of the Equal Credit Op-
12 portunity Act (15 U.S.C. 1691) is amended to read as
13 follows:

14 “(e) COPIES FURNISHED TO APPLICANTS.—

15 “(1) IN GENERAL.—Each creditor shall furnish
16 to an applicant a copy of any and all written ap-
17 praisals and valuations developed in connection with
18 the applicant's application for a loan that is secured
19 or would have been secured by a first lien on a
20 dwelling promptly upon completion, but in no case
21 later than 3 days prior to the closing of the loan,
22 whether the creditor grants or denies the applicant's
23 request for credit or the application is incomplete or
24 withdrawn.

1 “(2) WAIVER.—The applicant may waive the 3
2 day requirement provided for in paragraph (1), ex-
3 cept where otherwise required in law.

4 “(3) REIMBURSEMENT.—The applicant may be
5 required to pay a reasonable fee to reimburse the
6 creditor for the cost of the appraisal, except where
7 otherwise required in law.

8 “(4) FREE COPY.—Notwithstanding paragraph
9 (3), the creditor shall provide a copy of each written
10 appraisal or valuation at no additional cost to the
11 applicant.

12 “(5) NOTIFICATION TO APPLICANTS.—At the
13 time of application, the creditor shall notify an ap-
14 plicant in writing of the right to receive a copy of
15 each written appraisal and valuation under this sub-
16 section.

17 “(6) REGULATIONS.—The Board shall prescribe
18 regulations to implement this subsection within 1
19 year of the date of the enactment of this subsection.

20 “(7) VALUATION DEFINED.—For purposes of
21 this subsection, the term ‘valuation’ shall include
22 any estimate of the value of a dwelling developed in
23 connection with a creditor’s decision to provide cred-
24 it, including those values developed pursuant to a
25 policy of a government sponsored enterprise or by an

1 automated valuation model, a broker price opinion,
2 or other methodology or mechanism.”.

3 **SEC. 9506. REAL ESTATE SETTLEMENT PROCEDURES ACT**
4 **OF 1974 AMENDMENT RELATING TO CERTAIN**
5 **APPRAISAL FEES.**

6 Section 4 of the Real Estate Settlement Procedures
7 Act of 1974 is amended by adding at the end the following
8 new subsection:

9 “(c) The standard form described in subsection (a)
10 shall include, in the case of an appraisal coordinated by
11 an appraisal management company (as such term is de-
12 fined in section 1121(11) of the Financial Institutions Re-
13 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.
14 3350(11))), a clear disclosure of—

15 “(1) the fee paid directly to the appraiser by
16 such company; and

17 “(2) the administration fee charged by such
18 company.”.

1 **Subtitle G—Sense of Congress Re-**
2 **garding the Importance of Gov-**
3 **ernment Sponsored Enterprises**
4 **Reform**

5 **SEC. 9601. SENSE OF CONGRESS REGARDING THE IMPOR-**
6 **TANCE OF GOVERNMENT-SPONSORED EN-**
7 **TERPRISES REFORM TO ENHANCE THE PRO-**
8 **TECTION, LIMITATION, AND REGULATION OF**
9 **THE TERMS OF RESIDENTIAL MORTGAGE**
10 **CREDIT.**

11 (a) FINDINGS.—The Congress finds as follows:

12 (1) The Government-sponsored enterprises,
13 Federal National Mortgage Association (Fannie
14 Mae) and the Federal Home Loan Mortgage Cor-
15 poration (Freddie Mac), were chartered by Congress
16 to ensure a reliable and affordable supply of mort-
17 gage funding, but enjoy a dual legal status as pri-
18 vately owned corporations with Government man-
19 dated affordable housing goals.

20 (2) In 1996, the Department of Housing and
21 Urban Development required that 42 percent of
22 Fannie Mae's and Freddie Mac's mortgage financing
23 should go to borrowers with income levels below the
24 median for a given area.

1 (3) In 2004, the Department of Housing and
2 Urban Development revised those goals, increasing
3 them to 56 percent of their overall mortgage pur-
4 chases by 2008, and additionally mandated that 12
5 percent of all mortgage purchases by Fannie Mae
6 and Freddie Mac be “special affordable” loans made
7 to borrowers with incomes less than 60 percent of an
8 area’s median income, a target that ultimately in-
9 creased to 28 percent for 2008.

10 (4) To help fulfill those mandated affordable
11 housing goals, in 1995 the Department of Housing
12 and Urban Development authorized Fannie Mae and
13 Freddie Mac to purchase subprime securities that
14 included loans made to low-income borrowers.

15 (5) After this authorization to purchase
16 subprime securities, subprime and near-prime loans
17 increased from 9 percent of securitized mortgages in
18 2001 to 40 percent in 2006, while the market share
19 of conventional mortgages dropped from 78.8 per-
20 cent in 2003 to 50.1 percent by 2007 with a cor-
21 responding increase in subprime and Alt-A loans
22 from 10.1 percent to 32.7 percent over the same pe-
23 riod.

24 (6) In 2004 alone, Fannie Mae and Freddie
25 Mac purchased \$175,000,000,000 in subprime mort-

1 gage securities, which accounted for 44 percent of
2 the market that year, and from 2005 through 2007,
3 Fannie Mae and Freddie Mac purchased approxi-
4 mately \$1,000,000,000,000 in subprime and Alt-A
5 loans, while Fannie Mae's acquisitions of mortgages
6 with less than 10 percent down payments almost tri-
7 pled.

8 (7) According to data from the Federal Hous-
9 ing Finance Agency (FHFA) for the fourth quarter
10 of 2008, Fannie Mae and Freddie Mac own or guar-
11 antee 75 percent of all newly originated mortgages,
12 and Fannie Mae and Freddie Mac currently own
13 13.3 percent of outstanding mortgage debt in the
14 United States and have issued mortgage-backed se-
15 curities for 31.0 percent of the residential debt mar-
16 ket, a combined total of 44.3 percent of outstanding
17 mortgage debt in the United States.

18 (8) On September 7, 2008, the FHFA placed
19 Fannie Mae and Freddie Mac into conservatorship,
20 with the Treasury Department subsequently agree-
21 ing to purchase at least \$200,000,000,000 of pre-
22 ferred stock from each enterprise in exchange for
23 warrants for the purchase of 79.9 percent of each
24 enterprise's common stock.

1 Housing and Urban Development, the Attorney General,
2 and the Federal Trade Commission to crackdown on mort-
3 gage foreclosure rescue scams and loan modification fraud
4 in order to advise the Congress to the risks and
5 vulnerabilities of emerging schemes in the loan modifica-
6 tion arena.

7 (b) REPORT.—

8 (1) IN GENERAL.—The Comptroller General
9 shall submit a report to the Congress on the study
10 conducted under subsection (a) containing such rec-
11 ommendations for legislative and administrative ac-
12 tions as the Comptroller General may determine to
13 be appropriate in addition to the recommendations
14 required under paragraph (2).

15 (2) SPECIFIC TOPICS.—The report made under
16 paragraph (1) shall include—

17 (A) an evaluation of the effectiveness of
18 the inter-agency task force current efforts to
19 combat mortgage foreclosure rescue scams and
20 loan modification fraud scams;

21 (B) specific recommendations on agency or
22 legislative action that are essential to properly
23 protect homeowners from mortgage foreclosure
24 rescue scams and loan modification fraud
25 scams; and

- 1 (C) the adequacy of financial resources
2 that the Federal Government is allocating to—
3 (i) crackdown on loan modification
4 and foreclosure rescue scams; and
5 (ii) the education of homeowners
6 about fraudulent scams relating to loan
7 modification and foreclosure rescues.

8 **SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.**

9 (a) IN GENERAL.—Section 104(a) of the Helping
10 Families Save Their Homes Act of 2009 (division A of
11 Public Law 111–22) is amended—

12 (1) in paragraph (2), by striking “resulting”
13 and inserting “in each State that result”;

14 (2) in paragraph (3), by inserting “each State
15 for” after “modifications in”; and

16 (3) in paragraph (4), by inserting “in each
17 State” after “total number of loans”.

18 (b) CONFORMING AMENDMENT.—Section
19 104(b)(1)(A) of such Act is amended by adding at the end
20 the following sentence: “Not later than 60 days after the
21 date of the enactment of the Wall Street Reform and Con-
22 sumer Protection Act of 2009, the Comptroller of the Cur-
23 rency and the Director of the Office of Thrift Supervision
24 shall update such requirements to reflect amendments
25 made to this section by such Act.”.

1 **Subtitle I—Multifamily Mortgage**
2 **Resolution**

3 **SEC. 9801. MULTIFAMILY MORTGAGE RESOLUTION PRO-**
4 **GRAM.**

5 (a) ESTABLISHMENT.—The Secretary of Housing
6 and Urban Development shall develop a program under
7 this subsection to ensure the protection of current and fu-
8 ture tenants and at-risk multifamily properties, where fea-
9 sible, based on criteria that may include—

10 (1) creating sustainable financing of such prop-
11 erties, that may take into consideration such factors
12 as—

13 (A) the rental income generated by such
14 properties; and

15 (B) the preservation of adequate operating
16 reserves;

17 (2) maintaining the level of Federal, State, and
18 city subsidies in effect as of the date of the enact-
19 ment of this Act;

20 (3) providing funds for rehabilitation; and

21 (4) facilitating the transfer of such properties,
22 when appropriate and with the agreement of owners,
23 to responsible new owners and ensuring affordability
24 of such properties.

1 (b) COORDINATION.—The Secretary of Housing and
2 Urban Development may, in carrying out the program de-
3 veloped under this section, coordinate with the Secretary
4 of the Treasury, the Federal Deposit Insurance Corpora-
5 tion, the Board of Governors of the Federal Reserve Sys-
6 tem, the Federal Housing Finance Agency, and any other
7 Federal Government agency that the Secretary considers
8 appropriate.

9 (c) DEFINITION.—For purposes of this section, the
10 term “multifamily properties” means a residential struc-
11 ture that consists of 5 or more dwelling units.

12 **Subtitle J—Study of Effect of**
13 **Drywall Presence on Foreclosures**

14 **SEC. 9901. STUDY OF EFFECT OF DRYWALL PRESENCE ON**
15 **FORECLOSURES.**

16 (a) STUDY.—The Secretary of Housing and Urban
17 Development, in consultation with the Secretary of the
18 Treasury, shall conduct a study of the effect on residential
19 mortgage loan foreclosures of—

20 (1) the presence in residential structures sub-
21 ject to such mortgage loans of drywall that was im-
22 ported from China during the period beginning with
23 2004 and ending at the end of 2007; and

1 (2) the availability of property insurance for
2 residential structures in which such drywall is
3 present.

4 (b) REPORT.—Not later than the expiration of the
5 120-day period beginning on the date of the enactment
6 of this Act, the Secretary of Housing and Urban Develop-
7 ment shall submit to the Congress a report on the study
8 conducted under subsection (a) containing its findings,
9 conclusions, and recommendations.

10 **Subtitle K—Home Affordable** 11 **Modification Program**

12 **SEC. 9911. HOME AFFORDABLE MODIFICATION PROGRAM** 13 **GUIDELINES.**

14 (a) NET PRESENT VALUE INPUT DATA.—The Sec-
15 retary of the Treasury (in this section referred to as the
16 “Secretary”) shall revise the supplemental directives and
17 other guidelines for the Home Affordable Modification
18 Program of the Making Home Affordable initiative of the
19 Secretary of the Treasury, authorized under the Emer-
20 gency Economic Stabilization Act of 2008 (Public Law
21 110–343), to require each mortgage servicer participating
22 in such program to provide each borrower under a mort-
23 gage whose request for a mortgage modification under the
24 Program is denied with all borrower-related and mort-
25 gage-related input data used in any net present value

1 (NPV) analyses performed in connection with the subject
2 mortgage. Such input data shall be provided to the bor-
3 rower at the time of such denial.

4 (b) WEB-BASED SITE FOR NPV CALCULATOR AND
5 APPLICATION.—

6 (1) NPV CALCULATOR.—In carrying out the
7 Home Affordable Modification Program, the Sec-
8 retary shall establish and maintain a site on the
9 World Wide Web that provides a calculator for net
10 present value analyses of a mortgage, based on the
11 Secretary's methodology for calculating such value,
12 that mortgagors can use to enter information re-
13 garding their own mortgages and that provides a de-
14 termination after entering such information regard-
15 ing a mortgage of whether such mortgage would be
16 accepted or rejected for modification under the Pro-
17 gram, using such methodology.

18 (2) DISCLOSURE.— Such Web site shall also
19 prominently disclose that each mortgage servicer
20 participating in such Program may use a method for
21 calculating net present value of a mortgage that is
22 different than the method used by such calculator.

23 (3) APPLICATION.— The Secretary shall make
24 a reasonable effort to include on such World Wide
25 Web site a method for homeowners to apply for a

1 mortgage modification under the Home Affordable
2 Modification Program.

3 (c) PUBLIC AVAILABILITY OF NPV METHODOLOGY,
4 COMPUTER MODEL, AND VARIABLES.—The Secretary
5 shall make publicly available, including by posting on a
6 World Wide Web site of the Secretary—

7 (1) the Secretary’s methodology and computer
8 model, including all formulae used in such computer
9 model, used for calculating net present value of a
10 mortgage that is used by the calculator established
11 pursuant to subsection (b); and

12 (2) all variables used in such net present value
13 analysis.

14 **Subtitle L—Making Home** 15 **Affordable Program**

16 **SEC. 9921. PUBLIC AVAILABILITY OF INFORMATION.**

17 (a) REVISIONS TO PROGRAM GUIDELINES.—The Sec-
18 retary of the Treasury (in this section referred to as the
19 “Secretary”) shall revise the guidelines for the Home Af-
20 fordable Modification Program of the Making Home Af-
21 fordable initiative of the Secretary of the Treasury, au-
22 thorized under the Emergency Economic Stabilization Act
23 of 2008 (Public Law 110–343), to provide that the data
24 being collected by the Secretary from each mortgage

1 servicer and lender participating in the Program is made
2 public in accordance with subsection (b).

3 (b) PUBLIC AVAILABILITY.—Data shall be made
4 available according to the following guidelines:

5 (1) Not more than 14 days after each monthly
6 deadline for submission of data by mortgage
7 servicers and lenders participating in the Program,
8 reports shall be made publicly available by means of
9 a World Wide Web site of the Secretary, and by sub-
10 mitting a report to the Congress, that shall includes
11 the following information:

12 (A) The number of requests for mortgage
13 modifications under the Program that the
14 servicer or lender has received.

15 (B) The number of requests for mortgage
16 modifications under the Program that the
17 servicer or lender has processed.

18 (C) The number of requests for mortgage
19 modifications under the Program that the
20 servicer or lender has approved.

21 (D) The number of requests for mortgage
22 modifications under the Program that the
23 servicer or lender has denied.

24 (2) Not more than 60 days after each monthly
25 deadline for submission of data by mortgage

1 servicers and lenders participating in the Program,
2 the Secretary shall make data tables available to the
3 public at the individual record level. The Secretary
4 shall issue regulations prescribing—

5 (A) the procedures for disclosing such data
6 to the public; and

7 (B) such deletions as the Secretary may
8 determine to be appropriate to protect any pri-
9 vacy interest of any mortgage modification ap-
10 plicant, including the deletion or alteration of
11 the applicant's name and identification number.

12 **TITLE VIII—FORECLOSURE**
13 **AVOIDANCE AND AFFORD-**
14 **ABLE HOUSING**

15 **SEC. 10001. EMERGENCY MORTGAGE RELIEF.**

16 (a) USE OF TARP FUNDS.—Using the authority
17 available under sections 101(a) and 115(a) of division A
18 of the Emergency Economic Stabilization Act of 2008 (12
19 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury
20 shall transfer to the Secretary of Housing and Urban De-
21 velopment \$3,000,000,000, and the Secretary of Housing
22 and Urban Development shall credit such amount to the
23 Emergency Homeowners' Relief Fund, which such Sec-
24 retary shall establish pursuant to section 107 of the Emer-
25 gency Housing Act of 1975 (12 U.S.C. 2706), as such

1 Act is amended by this section, for use for emergency
2 mortgage assistance in accordance with title I of such Act.

3 (b) REAUTHORIZATION OF EMERGENCY MORTGAGE
4 RELIEF PROGRAM.—Title I of the Emergency Housing
5 Act of 1975 is amended—

6 (1) in section 103 (12 U.S.C. 2702)—

7 (A) in paragraph (2)—

8 (i) by striking “have indicated” and
9 all that follows through “regulation of the
10 holder” and insert “have certified”;

11 (ii) by striking “(such as the volume
12 of delinquent loans in its portfolio)”; and

13 (iii) by striking “, except that such
14 statement” and all that follows through
15 “purposes of this title”; and

16 (B) in paragraph (4), by inserting “or
17 medical conditions” after “adverse economic
18 conditions”;

19 (2) in section 104 (12 U.S.C. 2703)—

20 (A) in subsection (b), by striking “, but
21 such assistance” and all that follows through
22 the period at the end and inserting the fol-
23 lowing: “. The amount of assistance provided to
24 a homeowner under this title shall be an
25 amount that the Secretary determines is rea-

1 sonably necessary to supplement such amount
2 as the homeowner is capable of contributing to-
3 ward such mortgage payment, except that the
4 aggregate amount of such assistance provided
5 for any homeowner shall not exceed \$50,000.”;

6 (B) in subsection (d), by striking “interest
7 on a loan or advance” and all that follows
8 through the end of the subsection and inserting
9 the following: “(1) the rate of interest on any
10 loan or advance of credit insured under this
11 title shall be fixed for the life of the loan or ad-
12 vance of credit and shall not exceed the rate of
13 interest that is generally charged for mortgages
14 on single-family housing insured by the Sec-
15 retary of Housing and Urban Development
16 under title II of the National Housing Act at
17 the time such loan or advance of credit is made,
18 and (2) no interest shall be charged on interest
19 which is deferred on a loan or advance of credit
20 made under this title. In establishing rates,
21 terms and conditions for loans or advances of
22 credit made under this title, the Secretary shall
23 take into account a homeowner’s ability to
24 repay such loan or advance of credit.”; and

1 (C) in subsection (e), by inserting after the
2 period at the end of the first sentence the fol-
3 lowing: “Any eligible homeowner who receives a
4 grant or an advance of credit under this title
5 may repay the loan in full, without penalty, by
6 lump sum or by installment payments at any
7 time before the loan becomes due and pay-
8 able.”;

9 (3) in section 105 (12 U.S.C. 2704)—

10 (A) by striking subsection (b);

11 (B) in subsection (e)—

12 (i) by inserting “and emergency mort-
13 gage relief payments made under section
14 106” after “insured under this section”;
15 and

16 (ii) by striking “\$1,500,000,000 at
17 any one time” and inserting
18 “\$3,000,000,000”;

19 (C) by redesignating subsections (c), (d),
20 and (e) as subsections (b), (c), and (d), respec-
21 tively; and

22 (D) by adding at the end the following new
23 subsection:

24 “(e) The Secretary shall establish underwriting
25 guidelines or procedures to allocate amounts made avail-

1 able for loans and advances insured under this section and
2 for emergency relief payments made under section 106
3 based on the likelihood that a mortgagor will be able to
4 resume mortgage payments, pursuant to the requirement
5 under section 103(5).”;

6 (4) in section 107—

7 (A) by striking “(a)”; and

8 (B) by striking subsection (b);

9 (5) in section 108 (12 U.S.C. 2707), by adding
10 at the end the following new subsection:

11 “(d) COVERAGE OF EXISTING PROGRAMS.—The Sec-
12 retary shall allow funds to be administered by a State that
13 has an existing program that is determined by the Sec-
14 retary to provide substantially similar assistance to home-
15 owners. After such determination is made such State shall
16 not be required to modify such program to comply with
17 the provisions of this title.”;

18 (6) in section 109 (12 U.S.C. 2708)—

19 (A) in the section heading, by striking
20 “AUTHORIZATION AND”;

21 (B) by striking subsection (a);

22 (C) by striking “(b)”; and

23 (D) by striking “1977” and inserting
24 “2011”;

1 viso, amounts made available by this section shall re-
2 main available until expended.

3 (2) The 3rd, 4th, 5th, 6th, 7th, and 15th pro-
4 visos of such second undesignated paragraph shall
5 not apply to amounts made available by this section.

6 (3) Amounts made available by this section
7 shall be allocated based on a funding formula for
8 such amounts established by the Secretary in ac-
9 cordance with section 2301(b) of the Housing and
10 Economic Recovery Act of 2008 (42 U.S.C. 5301
11 note), except that—

12 (A) notwithstanding paragraph (2) of such
13 section 2301(b), the formula shall be estab-
14 lished not later than 30 days after the date of
15 the enactment of this Act;

16 (B) the Secretary may not establish any
17 minimum grant amount or size for grants to
18 States;

19 (C) the Secretary may establish a min-
20 imum grant amount for direct allocations to
21 units of general local government located within
22 a State, which shall not exceed \$1,000,000; and

23 (D) each State and local government re-
24 ceiving grant amounts shall establish proce-
25 dures to create preferences for the development

1 of affordable rental housing for properties as-
2 sisted with amounts made available by this sec-
3 tion.

4 (4) Paragraph (1) of section 2301(c) of the
5 Housing and Economic Recovery Act of 2008 shall
6 not apply to amounts made available by this section.

7 (5) Section 2302 of the Housing and Economic
8 Recovery Act of 2008 shall not apply to amounts
9 made available by this section.

10 (6) The fourth proviso from the end of such
11 second undesignated paragraph shall be applied to
12 amounts made available by this section by sub-
13 stituting “2013” for “2012”.

14 (7) Notwithstanding section 2301(a) of the
15 Housing and Economic Recovery Act of 2008, the
16 term “State” means any State of the United States,
17 the District of Columbia, the Commonwealth of
18 Puerto Rico, the Commonwealth of the Northern
19 Mariana Islands, Guam, the Virgin Islands, Amer-
20 ican Samoa, and other territory or possession of the
21 United States for purposes of this section and title
22 III of division B of such Act, as applied to amounts
23 made available by this section.

24 (8)(A) None of the amounts made available by
25 this section shall be distributed to—

1 (i) any organization which has been con-
2 victed for a violation under Federal law relating
3 to an election for Federal office; or

4 (ii) any organization which employs appli-
5 cable individuals.

6 (B) In this paragraph, the term “applicable in-
7 dividual” means an individual who—

8 (i) is—

9 (I) employed by the organization in a
10 permanent or temporary capacity;

11 (II) contracted or retained by the or-
12 ganization; or

13 (III) acting on behalf of, or with the
14 express or apparent authority of, the orga-
15 nization; and

16 (ii) has been convicted for a violation
17 under Federal law relating to an election for
18 Federal office.

19 **TITLE IX—NONADMITTED AND**
20 **REINSURANCE REFORM ACT**

21 **SEC. 10051. SHORT TITLE.**

22 This title may be cited as the “Nonadmitted and Re-
23 insurance Reform Act of 2009”.

1 **SEC. 10052. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this title,
3 this title shall take effect upon the expiration of the 12-
4 month period beginning on the date of the enactment of
5 this Act.

6 **Subtitle A—Nonadmitted Insurance**

7 **SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF**
8 **PREMIUM TAXES.**

9 (a) HOME STATE'S EXCLUSIVE AUTHORITY.— No
10 State other than the home State of an insured may require
11 any premium tax payment for nonadmitted insurance.

12 (b) ALLOCATION OF NONADMITTED PREMIUM
13 TAXES.—

14 (1) IN GENERAL.—The States may enter into a
15 compact or otherwise establish procedures to allocate
16 among the States the premium taxes paid to an in-
17 sured's home State described in subsection (a).

18 (2) EFFECTIVE DATE.—Except as expressly
19 otherwise provided in such compact or other proce-
20 dures, any such compact or other procedures—

21 (A) if adopted on or before the expiration
22 of the 330-day period that begins on the date
23 of the enactment of this Act, shall apply to any
24 premium taxes that, on or after such date of
25 enactment, are required to be paid to any State

1 that is subject to such compact or procedures;
2 and

3 (B) if adopted after the expiration of such
4 330-day period, shall apply to any premium
5 taxes that, on or after January 1 of the first
6 calendar year that begins after the expiration of
7 such 330-day period, are required to be paid to
8 any State that is subject to such compact or
9 procedures.

10 (3) REPORT.—Upon the expiration of the 330-
11 day period referred to in paragraph (2), the NAIC
12 may submit a report to the Committee on Financial
13 Services and Committee on the Judiciary of the
14 House of Representatives and the Committee on
15 Banking, Housing, and Urban Affairs of the Senate
16 identifying and describing any compact or other pro-
17 cedures for allocation among the States of premium
18 taxes that have been adopted during such period by
19 any States.

20 (4) NATIONWIDE SYSTEM.—The Congress in-
21 tends that each State adopt nationwide uniform re-
22 quirements, forms, and procedures, such as an inter-
23 state compact, that provides for the reporting, pay-
24 ment, collection, and allocation of premium taxes for
25 nonadmitted insurance consistent with this section.

1 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
2 PORT.— To facilitate the payment of premium taxes
3 among the States, an insured’s home State may require
4 surplus lines brokers and insureds who have independently
5 procured insurance to annually file tax allocation reports
6 with the insured’s home State detailing the portion of the
7 nonadmitted insurance policy premium or premiums at-
8 tributable to properties, risks or exposures located in each
9 State. The filing of a nonadmitted insurance tax allocation
10 report and the payment of tax may be made by a person
11 authorized by the insured to act as its agent.

12 **SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY**
13 **INSURED’S HOME STATE.**

14 (a) HOME STATE AUTHORITY.—Except as otherwise
15 provided in this section, the placement of nonadmitted in-
16 surance shall be subject to the statutory and regulatory
17 requirements solely of the insured’s home State.

18 (b) BROKER LICENSING.—No State other than an in-
19 sured’s home State may require a surplus lines broker to
20 be licensed in order to sell, solicit, or negotiate non-
21 admitted insurance with respect to such insured.

22 (c) ENFORCEMENT PROVISION.—With respect to sec-
23 tion 10101 and subsections (a) and (b) of this section,
24 any law, regulation, provision, or action of any State that
25 applies or purports to apply to nonadmitted insurance sold

1 to, solicited by, or negotiated with an insured whose home
2 State is another State shall be preempted with respect to
3 such application.

4 (d) WORKERS' COMPENSATION EXCEPTION.—This
5 section may not be construed to preempt any State law,
6 rule, or regulation that restricts the placement of workers'
7 compensation insurance or excess insurance for self-fund-
8 ed workers' compensation plans with a nonadmitted in-
9 surer.

10 **SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER**
11 **DATABASE.**

12 After the expiration of the 2-year period beginning
13 on the date of the enactment of this Act, a State may
14 not collect any fees relating to licensing of an individual
15 or entity as a surplus lines broker in the State unless the
16 State has in effect at such time laws or regulations that
17 provide for participation by the State in the national in-
18 surance producer database of the NAIC, or any other
19 equivalent uniform national database, for the licensure of
20 surplus lines brokers and the renewal of such licenses.

21 **SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES**
22 **ELIGIBILITY.**

23 A State may not—

24 (1) impose eligibility requirements on, or other-
25 wise establish eligibility criteria for, nonadmitted in-

1 surers domiciled in a United States jurisdiction, ex-
2 cept in conformance with such requirements and cri-
3 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
4 mitted Insurance Model Act, unless the State has
5 adopted nationwide uniform requirements, forms,
6 and procedures developed in accordance with section
7 10101(b) of this title that include alternative nation-
8 wide uniform eligibility requirements; and

9 (2) prohibit a surplus lines broker from placing
10 nonadmitted insurance with, or procuring non-
11 admitted insurance from, a nonadmitted insurer
12 domiciled outside the United States that is listed on
13 the Quarterly Listing of Alien Insurers maintained
14 by the International Insurers Department of the
15 NAIC.

16 **SEC. 10105. STREAMLINED APPLICATION FOR COMMER-**
17 **CIAL PURCHASERS.**

18 A surplus lines broker seeking to procure or place
19 nonadmitted insurance in a State for an exempt commer-
20 cial purchaser shall not be required to satisfy any State
21 requirement to make a due diligence search to determine
22 whether the full amount or type of insurance sought by
23 such exempt commercial purchaser can be obtained from
24 admitted insurers if—

1 (1) the broker procuring or placing the surplus
2 lines insurance has disclosed to the exempt commer-
3 cial purchaser that such insurance may or may not
4 be available from the admitted market that may pro-
5 vide greater protection with more regulatory over-
6 sight; and

7 (2) the exempt commercial purchaser has sub-
8 sequently requested in writing the broker to procure
9 or place such insurance from a nonadmitted insurer.

10 **SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE**
11 **MARKET.**

12 (a) IN GENERAL.—The Comptroller General of the
13 United States shall conduct a study of the nonadmitted
14 insurance market to determine the effect of the enactment
15 of this subtitle on the size and market share of the non-
16 admitted insurance market for providing coverage typi-
17 cally provided by the admitted insurance market.

18 (b) CONTENTS.—The study shall determine and ana-
19 lyze—

20 (1) the change in the size and market share of
21 the nonadmitted insurance market and in the num-
22 ber of insurance companies and insurance holding
23 companies providing such business in the 18-month
24 period that begins upon the effective date of this
25 Act;

1 (2) the extent to which insurance coverage typi-
2 cally provided by the admitted insurance market has
3 shifted to the nonadmitted insurance market;

4 (3) the consequences of any change in the size
5 and market share of the nonadmitted insurance
6 market, including differences in the price and avail-
7 ability of coverage available in both the admitted
8 and nonadmitted insurance markets;

9 (4) the extent to which insurance companies
10 and insurance holding companies that provide both
11 admitted and nonadmitted insurance have experi-
12 enced shifts in the volume of business between ad-
13 mitted and nonadmitted insurance; and

14 (5) the extent to which there has been a change
15 in the number of individuals who have nonadmitted
16 insurance policies, the type of coverage provided
17 under such policies, and whether such coverage is
18 available in the admitted insurance market.

19 (c) CONSULTATION WITH NAIC.—In conducting the
20 study under this section, the Comptroller General shall
21 consult with the NAIC.

22 (d) REPORT.—The Comptroller General shall com-
23 plete the study under this section and submit a report to
24 the Committee on Financial Services of the House of Rep-
25 resentatives and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate regarding the findings of the
2 study not later than 30 months after the effective date
3 of this Act.

4 **SEC. 10107. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions
6 shall apply:

7 (1) ADMITTED INSURER.—The term “admitted
8 insurer” means, with respect to a State, an insurer
9 licensed to engage in the business of insurance in
10 such State.

11 (2) AFFILIATE.—The term “affiliate” means,
12 with respect to an insured, any entity that controls,
13 is controlled by, or is under common control with the
14 insured.

15 (3) AFFILIATED GROUP.—The term “affiliated
16 group” means any group of entities that are all af-
17 filiated.

18 (4) CONTROL.—An entity has “control” over
19 another entity if—

20 (A) the entity directly or indirectly or act-
21 ing through one or more other persons owns,
22 controls or has the power to vote 25 percent or
23 more of any class of voting securities of the
24 other entity; or

1 (B) the entity controls in any manner the
2 election of a majority of the directors or trust-
3 ees of the other entity.

4 (5) EXEMPT COMMERCIAL PURCHASER.—The
5 term “exempt commercial purchaser” means any
6 person purchasing commercial insurance that, at the
7 time of placement, meets the following requirements:

8 (A) The person employs or retains a quali-
9 fied risk manager to negotiate insurance cov-
10 erage.

11 (B) The person has paid aggregate nation-
12 wide commercial property and casualty insur-
13 ance premiums in excess of \$100,000 in the im-
14 mediately preceding 12 months.

15 (C)(i) The person meets at least one of the
16 following criteria:

17 (I) The person possesses a net
18 worth in excess of \$20,000,000, as
19 such amount is adjusted pursuant to
20 clause (ii).

21 (II) The person generates annual
22 revenues in excess of \$50,000,000, as
23 such amount is adjusted pursuant to
24 clause (ii).

1 (III) The person employs more
2 than 500 full time or full time equiva-
3 lent employees per individual insured
4 or is a member of an affiliated group
5 employing more than 1,000 employees
6 in the aggregate.

7 (IV) The person is a not-for-prof-
8 it organization or public entity gener-
9 ating annual budgeted expenditures of
10 at least \$30,000,000, as such amount
11 is adjusted pursuant to clause (ii).

12 (V) The person is a municipality
13 with a population in excess of 50,000
14 persons.

15 (ii) Effective on the fifth January 1
16 occurring after the date of the enactment
17 of this Act and each fifth January 1 occur-
18 ring thereafter, the amounts in subclauses
19 (I), (II), and (IV) of clause (i) shall be ad-
20 justed to reflect the percentage change for
21 such 5-year period in the Consumer Price
22 Index for All Urban Consumers published
23 by the Bureau of Labor Statistics of the
24 Department of Labor.

25 (6) HOME STATE.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term “home State”
3 means, with respect to an insured—

4 (i) the State in which an insured
5 maintains its principal place of business or,
6 in the case of an individual, the individ-
7 ual’s principal residence; or

8 (ii) if 100 percent of the insured risk
9 is located out of the State referred to in
10 subparagraph (A), the State to which the
11 greatest percentage of the insured’s tax-
12 able premium for that insurance contract
13 is allocated.

14 (B) AFFILIATED GROUPS.—If more than
15 one insured from an affiliated group are named
16 insureds on a single nonadmitted insurance con-
17 tract, the term “home State” means the home
18 State, as determined pursuant to subparagraph
19 (A), of the member of the affiliated group that
20 has the largest percentage of premium attrib-
21 uted to it under such insurance contract.

22 (7) INDEPENDENTLY PROCURED INSURANCE.—
23 The term “independently procured insurance”
24 means insurance procured directly by an insured
25 from a nonadmitted insurer.

1 (8) NAIC.—The term “NAIC” means the Na-
2 tional Association of Insurance Commissioners or
3 any successor entity.

4 (9) NONADMITTED INSURANCE.—The term
5 “nonadmitted insurance” means any property and
6 casualty insurance permitted to be placed directly or
7 through a surplus lines broker with a nonadmitted
8 insurer eligible to accept such insurance.

9 (10) NON-ADMITTED INSURANCE MODEL
10 ACT.—The term “Non-Admitted Insurance Model
11 Act” means the provisions of the Non-Admitted In-
12 surance Model Act, as adopted by the NAIC on Au-
13 gust 3, 1994, and amended on September 30, 1996,
14 December 6, 1997, October 2, 1999, and June 8,
15 2002.

16 (11) NONADMITTED INSURER.—The term
17 “nonadmitted insurer” means, with respect to a
18 State, an insurer not licensed to engage in the busi-
19 ness of insurance in such State.

20 (12) QUALIFIED RISK MANAGER.—The term
21 “qualified risk manager” means, with respect to a
22 policyholder of commercial insurance, a person who
23 meets all of the following requirements:

1 (A) The person is an employee of, or third
2 party consultant retained by, the commercial
3 policyholder.

4 (B) The person provides skilled services in
5 loss prevention, loss reduction, or risk and in-
6 surance coverage analysis, and purchase of in-
7 surance.

8 (C) The person—

9 (i)(I) has a bachelor's degree or high-
10 er from an accredited college or university
11 in risk management, business administra-
12 tion, finance, economics, or any other field
13 determined by a State insurance commis-
14 sioner or other State regulatory official or
15 entity to demonstrate minimum com-
16 petence in risk management; and

17 (II)(aa) has three years of experi-
18 ence in risk financing, claims adminis-
19 tration, loss prevention, risk and in-
20 surance analysis, or purchasing com-
21 mercial lines of insurance; or

22 (bb) has one of the following
23 designations:

24 (AA) a designation as a
25 Chartered Property and

1 Casualty Underwriter (in
2 this subparagraph referred
3 to as “CPCU”) issued by
4 the American Institute for
5 CPCU/Insurance Institute of
6 America;

7 (BB) a designation as
8 an Associate in Risk Man-
9 agement (ARM) issued by
10 the American Institute for
11 CPCU/Insurance Institute of
12 America;

13 (CC) a designation as
14 Certified Risk Manager
15 (CRM) issued by the Na-
16 tional Alliance for Insurance
17 Education & Research;

18 (DD) a designation as
19 a RIMS Fellow (RF) issued
20 by the Global Risk Manage-
21 ment Institute; or

22 (EE) any other des-
23 ignation, certification, or li-
24 cense determined by a State
25 insurance commissioner or

1 other State insurance regu-
2 latory official or entity to
3 demonstrate minimum com-
4 petency in risk management;

5 (ii)(I) has at least seven years of ex-
6 perience in risk financing, claims adminis-
7 tration, loss prevention, risk and insurance
8 coverage analysis, or purchasing commer-
9 cial lines of insurance; and

10 (II) has any one of the designa-
11 tions specified in subitems (AA)
12 through (EE) of clause (i)(II)(bb);

13 (iii) has at least 10 years of experi-
14 ence in risk financing, claims administra-
15 tion, loss prevention, risk and insurance
16 coverage analysis, or purchasing commer-
17 cial lines of insurance; or

18 (iv) has a graduate degree from an
19 accredited college or university in risk
20 management, business administration, fi-
21 nance, economics, or any other field deter-
22 mined by a State insurance commissioner
23 or other State regulatory official or entity
24 to demonstrate minimum competence in
25 risk management.

1 (13) PREMIUM TAX.—The term “premium tax”
2 means, with respect to surplus lines or independently
3 procured insurance coverage, any tax, fee, assess-
4 ment, or other charge imposed by a government en-
5 tity directly or indirectly based on any payment
6 made as consideration for an insurance contract for
7 such insurance, including premium deposits, assess-
8 ments, registration fees, and any other compensation
9 given in consideration for a contract of insurance.

10 (14) SURPLUS LINES BROKER.—The term “sur-
11 plus lines broker” means an individual, firm, or cor-
12 poration which is licensed in a State to sell, solicit,
13 or negotiate insurance on properties, risks, or expo-
14 sures located or to be performed in a State with
15 nonadmitted insurers.

16 (15) STATE.—The term “State” includes any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, Guam, the
19 Northern Mariana Islands, the Virgin Islands, and
20 American Samoa.

21 **Subtitle B—Reinsurance**

22 **SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE** 23 **AND REINSURANCE AGREEMENTS.**

24 (a) CREDIT FOR REINSURANCE.—If the State of
25 domicile of a ceding insurer is an NAIC-accredited State,

1 or has financial solvency requirements substantially simi-
2 lar to the requirements necessary for NAIC accreditation,
3 and recognizes credit for reinsurance for the insurer's
4 ceded risk, then no other State may deny such credit for
5 reinsurance.

6 (b) ADDITIONAL PREEMPTION OF
7 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
8 addition to the application of subsection (a), all laws, regu-
9 lations, provisions, or other actions of a State that is not
10 the domiciliary State of the ceding insurer, except those
11 with respect to taxes and assessments on insurance com-
12 panies or insurance income, are preempted to the extent
13 that they—

14 (1) restrict or eliminate the rights of the ceding
15 insurer or the assuming insurer to resolve disputes
16 pursuant to contractual arbitration to the extent
17 such contractual provision is not inconsistent with
18 the provisions of title 9, United States Code;

19 (2) require that a certain State's law shall gov-
20 ern the reinsurance contract, disputes arising from
21 the reinsurance contract, or requirements of the re-
22 insurance contract;

23 (3) attempt to enforce a reinsurance contract
24 on terms different than those set forth in the rein-

1 surance contract, to the extent that the terms are
2 not inconsistent with this subtitle; or

3 (4) otherwise apply the laws of the State to re-
4 insurance agreements of ceding insurers not domi-
5 ciled in that State.

6 **SEC. 10202. REGULATION OF REINSURER SOLVENCY.**

7 (a) DOMICILIARY STATE REGULATION.—If the State
8 of domicile of a reinsurer is an NAIC-accredited State or
9 has financial solvency requirements substantially similar
10 to the requirements necessary for NAIC accreditation,
11 such State shall be solely responsible for regulating the
12 financial solvency of the reinsurer.

13 (b) NONDOMICILIARY STATES.—

14 (1) LIMITATION ON FINANCIAL INFORMATION
15 REQUIREMENTS.—If the State of domicile of a rein-
16 surer is an NAIC-accredited State or has financial
17 solvency requirements substantially similar to the re-
18 quirements necessary for NAIC accreditation, no
19 other State may require the reinsurer to provide any
20 additional financial information other than the infor-
21 mation the reinsurer is required to file with its
22 domiciliary State.

23 (2) RECEIPT OF INFORMATION.—No provision
24 of this section shall be construed as preventing or
25 prohibiting a State that is not the State of domicile

1 of a reinsurer from receiving a copy of any financial
2 statement filed with its domiciliary State.

3 **SEC. 10203. DEFINITIONS.**

4 For purposes of this subtitle, the following definitions
5 shall apply:

6 (1) CEDING INSURER.—The term “ceding in-
7 surer” means an insurer that purchases reinsurance.

8 (2) DOMICILIARY STATE.—The terms “State of
9 domicile” and “domiciliary State” means, with re-
10 spect to an insurer or reinsurer, the State in which
11 the insurer or reinsurer is incorporated or entered
12 through, and licensed.

13 (3) REINSURANCE.—The term “reinsurance”
14 means the assumption by an insurer of all or part
15 of a risk undertaken originally by another insurer.

16 (4) REINSURER.—

17 (A) IN GENERAL.—The term “reinsurer”
18 means an insurer to the extent that the in-
19 surer—

20 (i) is principally engaged in the busi-
21 ness of reinsurance;

22 (ii) does not conduct significant
23 amounts of direct insurance as a percent-
24 age of its net premiums; and

1 (iii) is not engaged in an ongoing
2 basis in the business of soliciting direct in-
3 surance.

4 (B) DETERMINATION.—A determination of
5 whether an insurer is a reinsurer shall be made
6 under the laws of the State of domicile in ac-
7 cordance with this paragraph.

8 (5) STATE.—The term “State” includes any
9 State of the United States, the District of Columbia,
10 the Commonwealth of Puerto Rico, Guam, the
11 Northern Mariana Islands, the Virgin Islands, and
12 American Samoa.

13 **Subtitle C—Rule of Construction**

14 **SEC. 10301. RULE OF CONSTRUCTION.**

15 Nothing in this title or amendments to this title shall
16 be construed to modify, impair, or supersede the applica-
17 tion of the antitrust laws. Any implied or actual conflict
18 between this title and any amendments to this title and
19 the antitrust laws shall be resolved in favor of the oper-
20 ation of the antitrust laws.

21 **SEC. 10302. SEVERABILITY.**

22 If any section or subsection of this title, or any appli-
23 cation of such provision to any person or circumstance,
24 is held to be unconstitutional, the remainder of this title,

1 and the application of the provision to any other person
2 or circumstance, shall not be affected.

3 **TITLE X—INTEREST-BEARING**
4 **TRANSACTION ACCOUNTS AU-**
5 **THORIZED**

6 **SEC. 11001. INTEREST-BEARING TRANSACTION ACCOUNTS**
7 **AUTHORIZED.**

8 (a) REPEAL OF PROHIBITION ON PAYMENT OF IN-
9 TEREST ON DEMAND DEPOSITS.—

10 (1) FEDERAL RESERVE ACT.—Section 19(i) of
11 the Federal Reserve Act (12 U.S.C. 371a) is amend-
12 ed to read as follows:

13 “(i) [Repealed]”.

14 (2) HOME OWNERS’ LOAN ACT.—The first sen-
15 tence of section 5(b)(1)(B) of the Home Owners’
16 Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by
17 striking “savings association may not—” and all
18 that follows through “(ii) permit any” and inserting
19 “savings association may not permit any”.

20 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
21 tion 18(g) of the Federal Deposit Insurance Act (12
22 U.S.C. 1828(g)) is amended to read as follows:

23 “(g) [Repealed]”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect at the end of the 1-year
3 period beginning on the date of the enactment of this Act.

Passed the House of Representatives December 11,
2009.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

H. R. 4173

AN ACT

To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.