

## **H.R. 10, As Ordered Reported by the Committee on Financial Services**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE.**

**2** This Act may be cited as the “9/11 Recommendations  
**3** Implementation Act”.

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

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

**TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY**

Sec. 1001. Short title.

Subtitle A—Establishment of National Intelligence Director

Sec. 1011. Reorganization and improvement of management of intelligence  
community.

Sec. 1012. Revised definition of national intelligence.

Sec. 1013. Joint procedures for operational coordination between Department  
of Defense and Central Intelligence Agency.

Sec. 1014. Role of National Intelligence Director in appointment of certain offi-  
cials responsible for intelligence-related activities.

Sec. 1015. Initial appointment of the National Intelligence Director.

Sec. 1016. Executive schedule matters.

Subtitle B—National Counterterrorism Center and Civil Liberties Protections

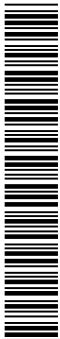
Sec. 1021. National Counterterrorism Center.

Sec. 1022. Civil Liberties Protection Officer.

Subtitle C—Joint Intelligence Community Council

Sec. 1031. Joint Intelligence Community Council.

Subtitle D—Improvement of Human Intelligence (HUMINT)



- Sec. 1041. Human intelligence as an increasingly critical component of the intelligence community.
- Sec. 1042. Improvement of human intelligence capacity.

Subtitle E—Improvement of Education for the Intelligence Community

- Sec. 1051. Modification of obligated service requirements under National Security Education Program.
- Sec. 1052. Improvements to the National Flagship Language Initiative.
- Sec. 1053. Establishment of scholarship program for English language studies for heritage community citizens of the United States within the National Security Education Program.
- Sec. 1054. Sense of Congress with respect to language and education for the intelligence community; reports.
- Sec. 1055. Advancement of foreign languages critical to the intelligence community.
- Sec. 1056. Pilot project for Civilian Linguist Reserve Corps.
- Sec. 1057. Codification of establishment of the National Virtual Translation Center.
- Sec. 1058. Report on recruitment and retention of qualified instructors of the Defense Language Institute.

Subtitle F—Additional Improvements of Intelligence Activities

- Sec. 1061. Permanent extension of Central Intelligence Agency Voluntary Separation Incentive Program.
- Sec. 1062. National Security Agency Emerging Technologies Panel.

Subtitle G—Conforming and Other Amendments

- Sec. 1071. Conforming amendments relating to roles of National Intelligence Director and Director of the Central Intelligence Agency.
- Sec. 1072. Other conforming amendments
- Sec. 1073. Elements of intelligence community under National Security Act of 1947.
- Sec. 1074. Redesignation of National Foreign Intelligence Program as National Intelligence Program.
- Sec. 1075. Repeal of superseded authorities.
- Sec. 1076. Clerical amendments to National Security Act of 1947.
- Sec. 1077. Conforming amendments relating to prohibiting dual service of the Director of the Central Intelligence Agency.
- Sec. 1078. Access to Inspector General protections.
- Sec. 1079. General references.
- Sec. 1080. Application of other laws.

Subtitle H—Transfer, Termination, Transition and Other Provisions

- Sec. 1091. Transfer of community management staff.
- Sec. 1092. Transfer of terrorist threat integration center.
- Sec. 1093. Termination of positions of Assistant Directors of Central Intelligence.
- Sec. 1094. Implementation plan.
- Sec. 1095. Transitional authorities.
- Sec. 1096. Effective dates.

Subtitle I—Grand Jury Information Sharing



Sec. 1101. Grand jury information sharing.

Subtitle J—Other Matters

Sec. 1111. Interoperable law enforcement and intelligence data system.

Sec. 1112. Improvement of intelligence capabilities of the Federal Bureau of Investigation.

**TITLE II—TERRORISM PREVENTION AND PROSECUTION**

Subtitle A—Individual Terrorists as Agents of Foreign Powers

Sec. 2001. Individual terrorists as agents of foreign powers.

Subtitle B—Stop Terrorist and Military Hoaxes Act of 2004

Sec. 2021. Short title.

Sec. 2022. Hoaxes and recovery costs.

Sec. 2023. Obstruction of justice and false statements in terrorism cases.

Sec. 2024. Clarification of definition.

Subtitle C—Material Support to Terrorism Prohibition Enhancement Act of 2004

Sec. 2041. Short title.

Sec. 2042. Receiving military-type training from a foreign terrorist organization.

Sec. 2043. Providing material support to terrorism.

Sec. 2044. Financing of terrorism.

Subtitle D—Weapons of Mass Destruction Prohibition Improvement Act of 2004

Sec. 2051. Short title.

Sec. 2052. Weapons of mass destruction.

Sec. 2053. Participation in nuclear and weapons of mass destruction threats to the United States.

Subtitle E—Money Laundering and Terrorist Financing

CHAPTER 1—FUNDING TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

Sec. 2101. Additional authorization for FinCEN.

Sec. 2102. Money laundering and financial crimes strategy reauthorization.

CHAPTER 2—ENFORCEMENT TOOLS TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

SUBCHAPTER A—MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM TECHNICAL CORRECTIONS

Sec. 2111. Short title.

Sec. 2112. Technical corrections to Public Law 107–56.

Sec. 2113. Technical corrections to other provisions of law.

Sec. 2114. Repeal of review.

Sec. 2115. Effective date.



## SUBCHAPTER B—ADDITIONAL ENFORCEMENT TOOLS

- Sec. 2121. Bureau of Engraving and Printing security printing.
- Sec. 2122. Conduct in aid of counterfeiting.
- Sec. 2123. Reporting of cross-border transmittal of funds.
- Sec. 2124. Enhanced effectiveness of examinations, including anti-money laundering programs.

## SUBCHAPTER C—UNLAWFUL INTERNET GAMBLING FUNDING PROHIBITION

- Sec. 2131. Short title.
- Sec. 2132. Findings.
- Sec. 2133. Policies and procedures required to prevent payments for unlawful internet gambling.
- Sec. 2134. Definitions.
- Sec. 2135. Common sense rule of construction.

## Subtitle F—Criminal History Background Checks

- Sec. 2141. Short title.
- Sec. 2142. Criminal history information checks.

## Subtitle G—Protection of United States Aviation System from Terrorist Attacks

- Sec. 2171. Provision for the use of biometric or other technology.
- Sec. 2172. Transportation security strategic planning.
- Sec. 2173. Next generation airline passenger prescreening.
- Sec. 2174. Deployment and use of explosive detection equipment at airport screening checkpoints.
- Sec. 2175. Pilot program to evaluate use of blast-resistant cargo and baggage containers.
- Sec. 2176. Air cargo screening technology.
- Sec. 2177. Airport checkpoint screening explosive detection.
- Sec. 2178. Next generation security checkpoint.
- Sec. 2179. Penalty for failure to secure cockpit door.
- Sec. 2180. Federal air marshal anonymity.
- Sec. 2181. Federal law enforcement in-flight counterterrorism training.
- Sec. 2182. Federal flight deck officer weapon carriage pilot program.
- Sec. 2183. Registered traveler program.
- Sec. 2184. Wireless communication.
- Sec. 2185. Secondary flight deck barriers.
- Sec. 2186. Extension.
- Sec. 2187. Perimeter Security.
- Sec. 2188. Definitions.

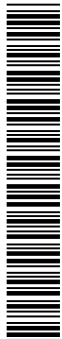
## Subtitle H—Other Matters

- Sec. 2191. Grand jury information sharing.
- Sec. 2192. Interoperable law enforcement and intelligence data system.
- Sec. 2193. Improvement of intelligence capabilities of the Federal Bureau of Investigation.

**TITLE III—BORDER SECURITY AND TERRORIST TRAVEL**

## Subtitle A—Immigration Reform in the National Interest

## CHAPTER 1—GENERAL PROVISIONS



- Sec. 3001. Eliminating the “Western Hemisphere” exception for citizens.
- Sec. 3002. Modification of waiver authority with respect to documentation requirements for nationals of foreign contiguous territories and adjacent islands.
- Sec. 3003. Increase in full-time border patrol agents.
- Sec. 3004. Increase in full-time immigration and customs enforcement investigators.
- Sec. 3005. Alien identification standards.
- Sec. 3006. Expedited removal.
- Sec. 3007. Preventing terrorists from obtaining asylum.
- Sec. 3008. Revocation of visas and other travel documentation.
- Sec. 3009. Judicial review of orders of removal.

#### CHAPTER 2—DEPORTATION OF TERRORISTS AND SUPPORTERS OF TERRORISM

- Sec. 3031. Expanded inapplicability of restriction on removal.
- Sec. 3032. Exception to restriction on removal for terrorists and criminals.
- Sec. 3033. Additional removal authorities.

#### Subtitle B—Identity Management Security

#### CHAPTER 1—IMPROVED SECURITY FOR DRIVERS’ LICENSES AND PERSONAL IDENTIFICATION CARDS

- Sec. 3051. Definitions.
- Sec. 3052. Minimum document requirements and issuance standards for Federal recognition.
- Sec. 3053. Linking of databases.
- Sec. 3054. Trafficking in authentication features for use in false identification documents.
- Sec. 3055. Grants to States.
- Sec. 3056. Authority.

#### CHAPTER 2—IMPROVED SECURITY FOR BIRTH CERTIFICATES

- Sec. 3061. Definitions.
- Sec. 3062. Applicability of minimum standards to local governments.
- Sec. 3063. Minimum standards for Federal recognition.
- Sec. 3064. Establishment of electronic birth and death registration systems.
- Sec. 3065. Electronic verification of vital events.
- Sec. 3066. Grants to States.
- Sec. 3067. Authority.

#### CHAPTER 3—MEASURES TO ENHANCE PRIVACY AND INTEGRITY OF SOCIAL SECURITY ACCOUNT NUMBERS

- Sec. 3071. Prohibition of the display of social security account numbers on driver’s licenses or motor vehicle registrations.
- Sec. 3072. Independent verification of birth records provided in support of applications for social security account numbers.
- Sec. 3073. Enumeration at birth.
- Sec. 3074. Study relating to use of photographic identification in connection with applications for benefits, social security account numbers, and social security cards.
- Sec. 3075. Restrictions on issuance of multiple replacement social security cards.



## 6

- Sec. 3076. Study relating to modification of the social security account numbering system to show work authorization status.

Subtitle C—Targeting Terrorist Travel

- Sec. 3081. Studies on machine-readable passports and travel history database.  
 Sec. 3082. Expanded preinspection at foreign airports.  
 Sec. 3083. Immigration security initiative.  
 Sec. 3084. Responsibilities and functions of consular officers.  
 Sec. 3085. Increase in penalties for fraud and related activity.  
 Sec. 3086. Criminal penalty for false claim to citizenship.  
 Sec. 3087. Antiterrorism assistance training of the Department of State.  
 Sec. 3088. International agreements to track and curtail terrorist travel through the use of fraudulently obtained documents.  
 Sec. 3089. International standards for translation of names into the Roman alphabet for international travel documents and name-based watchlist systems.  
 Sec. 3090. Biometric entry and exit data system.  
 Sec. 3091. Enhanced responsibilities of the Coordinator for Counterterrorism.  
 Sec. 3092. Establishment of Office of Visa and Passport Security in the Department of State.

Subtitle D—Terrorist Travel

- Sec. 3101. Information sharing and coordination.  
 Sec. 3102. Terrorist travel program.  
 Sec. 3103. Training program.  
 Sec. 3104. Technology acquisition and dissemination plan.

Subtitle E—Maritime Security Requirements

- Sec. 3111. Deadlines for implementation of maritime security requirements.

**TITLE IV—INTERNATIONAL COOPERATION AND  
COORDINATION**

Subtitle A—Attack Terrorists and Their Organizations

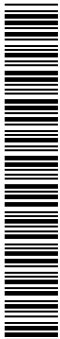
CHAPTER 1—PROVISIONS RELATING TO TERRORIST SANCTUARIES

- Sec. 4001. United States policy on terrorist sanctuaries.  
 Sec. 4002. Reports on terrorist sanctuaries.  
 Sec. 4003. Amendments to existing law to include terrorist sanctuaries.

CHAPTER 2—OTHER PROVISIONS

- Sec. 4011. Appointments to fill vacancies in Arms Control and Nonproliferation Advisory Board.  
 Sec. 4012. Review of United States policy on proliferation of weapons of mass destruction and control of strategic weapons.  
 Sec. 4013. International agreements to interdict acts of international terrorism.  
 Sec. 4014. Effective Coalition approach toward detention and humane treatment of captured terrorists.  
 Sec. 4015. Sense of Congress and report regarding counter-drug efforts in Afghanistan.

Subtitle B—Prevent the Continued Growth of Terrorism



## CHAPTER 1—UNITED STATES PUBLIC DIPLOMACY

- Sec. 4021. Annual review and assessment of public diplomacy strategy.
- Sec. 4022. Public diplomacy training.
- Sec. 4023. Promoting direct exchanges with Muslim countries.
- Sec. 4024. Public diplomacy required for promotion in Foreign Service.

## CHAPTER 2—UNITED STATES MULTILATERAL DIPLOMACY

- Sec. 4031. Purpose.
- Sec. 4032. Support and expansion of democracy caucus.
- Sec. 4033. Leadership and membership of international organizations.
- Sec. 4034. Increased training in multilateral diplomacy.
- Sec. 4035. Implementation and establishment of Office on Multilateral Negotiations.

## CHAPTER 3—OTHER PROVISIONS

- Sec. 4041. Pilot program to provide grants to American-sponsored schools in predominantly Muslim countries to provide scholarships.
- Sec. 4042. Enhancing free and independent media.
- Sec. 4043. Combating biased or false foreign media coverage of the United States.
- Sec. 4044. Report on broadcast outreach strategy.
- Sec. 4045. Office relocation.
- Sec. 4046. Strengthening the Community of Democracies for Muslim countries.

## Subtitle C—Reform of Designation of Foreign Terrorist Organizations

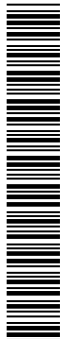
- Sec. 4051. Designation of foreign terrorist organizations.
- Sec. 4052. Inclusion in annual Department of State country reports on terrorism of information on terrorist groups that seek weapons of mass destruction and groups that have been designated as foreign terrorist organizations.

## Subtitle D—Afghanistan Freedom Support Act Amendments of 2004

- Sec. 4061. Short title.
- Sec. 4062. Coordination of assistance for Afghanistan.
- Sec. 4063. General provisions relating to the Afghanistan Freedom Support Act of 2002.
- Sec. 4064. Rule of law and related issues.
- Sec. 4065. Monitoring of assistance.
- Sec. 4066. United States policy to support disarmament of private militias and to support expansion of international peacekeeping and security operations in Afghanistan.
- Sec. 4067. Efforts to expand international peacekeeping and security operations in Afghanistan.
- Sec. 4068. Provisions relating to counternarcotics efforts in Afghanistan.
- Sec. 4069. Additional amendments to the Afghanistan Freedom Support Act of 2002.
- Sec. 4070. Repeal.

## Subtitle E—Provisions Relating to Saudi Arabia and Pakistan

- Sec. 4081. New United States strategy for relationship with Saudi Arabia.
- Sec. 4082. United States commitment to the future of Pakistan.
- Sec. 4083. Extension of Pakistan waivers.



## Subtitle F—Oversight Provisions

Sec. 4091. Case-Zablocki Act requirements.

## Subtitle G—Additional Protections of United States Aviation System from Terrorist Attacks

Sec. 4101. International agreements to allow maximum deployment of Federal flight deck officers.

Sec. 4102. Federal air marshal training.

Sec. 4103. Man-portable air defense systems (MANPADS).

## Subtitle H—Improving International Standards and Cooperation to Fight Terrorist Financing

Sec. 4111. Sense of the Congress regarding success in multilateral organizations.

Sec. 4112. Expanded reporting and testimony requirements for the Secretary of the Treasury.

Sec. 4113. Coordination of United States Government efforts.

Sec. 4114. Definitions.

**TITLE V—GOVERNMENT RESTRUCTURING**

## Subtitle A—Faster and Smarter Funding for First Responders

Sec. 5001. Short title.

Sec. 5002. Findings.

Sec. 5003. Faster and smarter funding for first responders.

Sec. 5004. Modification of homeland security advisory system.

Sec. 5005. Coordination of industry efforts.

Sec. 5006. Superseded provision.

Sec. 5007. Sense of Congress regarding interoperable communications.

Sec. 5008. Sense of Congress regarding citizen corps councils.

Sec. 5009. Study regarding nationwide emergency notification system.

Sec. 5010. Required coordination.

## Subtitle B—Government Reorganization Authority

Sec. 5021. Authorization of intelligence community reorganization plans.

## Subtitle C—Restructuring Relating to the Department of Homeland Security and Congressional Oversight

Sec. 5025. Responsibilities of Counternarcotics Office.

Sec. 5026. Use of counternarcotics enforcement activities in certain employee performance appraisals.

Sec. 5027. Sense of the House of Representatives on addressing homeland security for the American people.

## Subtitle D—Improvements to Information Security

Sec. 5031. Amendments to Clinger-Cohen provisions to enhance agency planning for information security needs.

## Subtitle E—Personnel Management Improvements

## CHAPTER 1—APPOINTMENTS PROCESS REFORM





## 9

- Sec. 5041. Appointments to national security positions.
- Sec. 5042. Presidential inaugural transitions.
- Sec. 5043. Public financial disclosure for the intelligence community.
- Sec. 5044. Reduction of positions requiring appointment with Senate confirmation.
- Sec. 5045. Effective dates.

## CHAPTER 2—FEDERAL BUREAU OF INVESTIGATION REVITALIZATION

- Sec. 5051. Mandatory separation age.
- Sec. 5052. Retention and relocation bonuses.
- Sec. 5053. Federal Bureau of Investigation Reserve Service.
- Sec. 5054. Critical positions in the Federal Bureau of Investigation intelligence directorate.

## CHAPTER 3—MANAGEMENT AUTHORITY

- Sec. 5061. Management authority.

## Subtitle F—Security Clearance Modernization

- Sec. 5071. Definitions.
- Sec. 5072. Security clearance and investigative programs oversight and administration.
- Sec. 5073. Reciprocity of security clearance and access determinations.
- Sec. 5074. Establishment of national database .
- Sec. 5075. Use of available technology in clearance investigations.
- Sec. 5076. Reduction in length of personnel security clearance process.
- Sec. 5077. Security clearances for presidential transition.
- Sec. 5078. Reports.

## Subtitle G—Emergency Financial Preparedness

## CHAPTER 1—EMERGENCY PREPAREDNESS FOR FISCAL AUTHORITIES

- Sec. 5081. Delegation authority of the Secretary of the Treasury.
- Sec. 5081A. Treasury support for financial services industry preparedness and response.

## CHAPTER 2—MARKET PREPAREDNESS

## SUBCHAPTER A—NETTING OF FINANCIAL CONTRACTS

- Sec. 5082. Short title.
- Sec. 5082A. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 5082B. Authority of the FDIC and NCUAB with respect to failed and failing institutions.
- Sec. 5082C. Amendments relating to transfers of qualified financial contracts.
- Sec. 5082D. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 5082E. Clarifying amendment relating to master agreements.
- Sec. 5082F. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 5082G. Bankruptcy code amendments.
- Sec. 5082H. Recordkeeping requirements.
- Sec. 5082I. Exemptions from contemporaneous execution requirement.
- Sec. 5082J. Damage measure.
- Sec. 5082K. SIPC stay.



- Sec. 5082L. Applicability of other sections to chapter 9.
- Sec. 5082M. Effective date; application of amendments.
- Sec. 5082N. Savings clause.

SUBCHAPTER B—EMERGENCY SECURITIES RESPONSE

- Sec. 5086. Short title.
- Sec. 5087. Extension of emergency order authority of the Securities and Exchange Commission.
- Sec. 5088. Parallel authority of the Secretary of the Treasury with respect to government securities.
- Sec. 5089. Joint report on implementation of financial system resilience recommendations.
- Sec. 5089A. Private sector preparedness.
- Sec. 5089B. Report on public/private partnerships.

Subtitle H—Other Matters

CHAPTER 1—PRIVACY MATTERS

- Sec. 5091. Requirement that agency rulemaking take into consideration impacts on individual privacy.
- Sec. 5092. Chief privacy officers for agencies with law enforcement or anti-terrorism functions.

CHAPTER 2—MUTUAL AID AND LITIGATION MANAGEMENT

- Sec. 5101. Short title.
- Sec. 5102. Mutual aid authorized.
- Sec. 5103. Litigation management agreements.
- Sec. 5104. Additional provisions.
- Sec. 5105. Definitions.

CHAPTER 3—MISCELLANEOUS MATTERS

- Sec. 5131. Enhancement of public safety communications interoperability.
- Sec. 5132. Sense of Congress regarding the incident command system.
- Sec. 5133. Sense of Congress regarding United States Northern Command plans and strategies.

1           **TITLE I—REFORM OF THE**  
 2           **INTELLIGENCE COMMUNITY**

          【Title I of the Amendment in the Nature  
of a Substitute consists of title I of the bill  
H.R. 10, as introduced on September 24,  
2004】



1 **TITLE II—TERRORISM PREVEN-**  
2 **TION AND PROSECUTION**

    【Subtitles A through D of title II of the Amendment in the Nature of a Substitute consist of subtitles A through D of title II of the bill H.R. 10, as introduced on September 24, 2004】

3 **Subtitle E—Money Laundering and**  
4 **Terrorist Financing**

5 **CHAPTER 1—FUNDING TO COMBAT FI-**  
6 **NANCIAL CRIMES INCLUDING TER-**  
7 **RORIST FINANCING**

8 **SEC. 2101. ADDITIONAL AUTHORIZATION FOR FINCEN.**

9 Subsection (d) of section 310 of title 31, United  
10 States Code, is amended—

11 (1) by striking “APPROPRIATIONS.—There are  
12 authorized” and inserting “APPROPRIATIONS.—

13 “(1) IN GENERAL.—There are authorized”; and

14 (2) by adding at the end the following new  
15 paragraph:

16 “(2) AUTHORIZATION FOR FUNDING KEY TECH-  
17 NOLOGICAL IMPROVEMENTS IN MISSION-CRITICAL  
18 FINCEN SYSTEMS.—There are authorized to be ap-  
19 propriated for fiscal year 2005 the following



1 amounts, which are authorized to remain available  
2 until expended:

3 “(A) BSA DIRECT.—For technological im-  
4 provements to provide authorized law enforce-  
5 ment and financial regulatory agencies with  
6 Web-based access to FinCEN data, to fully de-  
7 velop and implement the highly secure network  
8 required under section 362 of Public Law 107–  
9 56 to expedite the filing of, and reduce the fil-  
10 ing costs for, financial institution reports, in-  
11 cluding suspicious activity reports, collected by  
12 FinCEN under chapter 53 and related provi-  
13 sions of law, and enable FinCEN to imme-  
14 diately alert financial institutions about sus-  
15 picious activities that warrant immediate and  
16 enhanced scrutiny, and to provide and upgrade  
17 advanced information-sharing technologies to  
18 materially improve the Government’s ability to  
19 exploit the information in the FinCEN  
20 databanks, \$16,500,000.

21 “(B) ADVANCED ANALYTICAL TECH-  
22 NOLOGIES.—To provide advanced analytical  
23 tools needed to ensure that the data collected  
24 by FinCEN under chapter 53 and related provi-  
25 sions of law are utilized fully and appropriately



1 in safeguarding financial institutions and sup-  
2 porting the war on terrorism, \$5,000,000.

3 “(C) DATA NETWORKING MODERNIZA-  
4 TION.—To improve the telecommunications in-  
5 frastructure to support the improved capabili-  
6 ties of the FinCEN systems, \$3,000,000.

7 “(D) ENHANCED COMPLIANCE CAPA-  
8 BILITY.—To improve the effectiveness of the  
9 Office of Compliance in FinCEN, \$3,000,000.

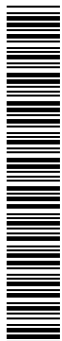
10 “(E) DETECTION AND PREVENTION OF FI-  
11 NANCIAL CRIMES AND TERRORISM.—To provide  
12 development of, and training in the use of, tech-  
13 nology to detect and prevent financial crimes  
14 and terrorism within and without the United  
15 States, \$8,000,000.”.

16 **SEC. 2102. MONEY LAUNDERING AND FINANCIAL CRIMES**  
17 **STRATEGY REAUTHORIZATION.**

18 (a) PROGRAM.—Section 5341(a)(2) of title 31,  
19 United States Code, is amended by striking “and 2003,”  
20 and inserting “2003, and 2005,”.

21 (b) REAUTHORIZATION OF APPROPRIATIONS.—Sec-  
22 tion 5355 of title 31, United States Code, is amended by  
23 adding at the end the following:

“2004 ..... \$15,000,000.  
“2005 ..... \$15,000,000.”.



1 **CHAPTER 2—ENFORCEMENT TOOLS TO**  
2 **COMBAT FINANCIAL CRIMES INCLUD-**  
3 **ING TERRORIST FINANCING**

4 **Subchapter A—Money laundering abatement**  
5 **and financial antiterrorism technical cor-**  
6 **rections**

7 **SEC. 2111. SHORT TITLE.**

8 This subchapter may be cited as the “Money Laun-  
9 dering Abatement and Financial Antiterrorism Technical  
10 Corrections Act of 2004”.

11 **SEC. 2112. TECHNICAL CORRECTIONS TO PUBLIC LAW 107-**  
12 **56.**

13 (a) The heading of title III of Public Law 107–56  
14 is amended to read as follows:

15 **“TITLE III—INTERNATIONAL**  
16 **MONEY LAUNDERING ABATE-**  
17 **MENT AND FINANCIAL**  
18 **ANTITERRORISM ACT OF**  
19 **2001”.**

20 (b) The table of contents of Public Law 107–56 is  
21 amended by striking the item relating to title III and in-  
22 serting the following new item:

“TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT  
AND FINANCIAL ANTITERRORISM ACT OF 2001”.

23 (c) Section 302 of Public Law 107–56 is amended—



1 (1) in subsection (a)(4), by striking the comma  
2 after “movement of criminal funds”;

3 (2) in subsection (b)(7), by inserting “or types  
4 of accounts” after “classes of international trans-  
5 actions”; and

6 (3) in subsection (b)(10), by striking “sub-  
7 chapters II and III” and inserting “subchapter II”.

8 (d) Section 303(a) of Public Law 107–56 is amended  
9 by striking “Anti-Terrorist Financing Act” and inserting  
10 “Financial Antiterrorism Act”.

11 (e) The heading for section 311 of Public Law 107–  
12 56 is amended by striking “**OR INTERNATIONAL**  
13 **TRANSACTIONS**” and inserting “**INTERNATIONAL**  
14 **TRANSACTIONS, OR TYPES OF ACCOUNTS**”.

15 (f) Section 314 of Public Law 107–56 is amended—

16 (1) in paragraph (1)—

17 (A) by inserting a comma after “organiza-  
18 tions engaged in”; and

19 (B) by inserting a comma after “credible  
20 evidence of engaging in”;

21 (2) in paragraph (2)(A)—

22 (A) by striking “and” after “nongovern-  
23 mental organizations,”; and

24 (B) by inserting a comma after “unwit-  
25 tingly involved in such finances”;



1 (3) in paragraph (3)(A)—

2 (A) by striking “to monitor accounts of”  
3 and inserting “monitor accounts of,”; and

4 (B) by striking the comma after “organiza-  
5 tions identified”; and

6 (4) in paragraph (3)(B), by inserting “finan-  
7 cial” after “size, and nature of the”.

8 (g) Section 321 of Public Law 107–56 is amended  
9 by striking “5312(2)” and inserting “5312(a)(2)”.

10 (h) Section 325 of Public Law 107–56 is amended  
11 by striking “as amended by section 202 of this title,” and  
12 inserting “as amended by section 352,”.

13 (i) Subsections (a)(2) and (b)(2) of section 327 of  
14 Public Law 107–56 are each amended by inserting a pe-  
15 riod after “December 31, 2001” and striking all that fol-  
16 lows through the period at the end of each such sub-  
17 section.

18 (j) Section 356(c)(4) of Public Law 107–56 is  
19 amended by striking “or business or other grantor trust”  
20 and inserting “, business trust, or other grantor trust”.

21 (k) Section 358(e) of Public Law 107–56 is  
22 amended—

23 (1) by striking “Section 123(a)” and inserting  
24 “That portion of section 123(a)”;





1           (2) by striking “is amended to read” and in-  
2           serting “that precedes paragraph (1) of such section  
3           is amended to read”; and

4           (3) by striking “.” at the end of such section  
5           and inserting “—”.

6           (l) Section 360 of Public Law 107–56 is amended—

7           (1) in subsection (a), by inserting “the” after  
8           “utilization of the funds of”; and

9           (2) in subsection (b), by striking “at such insti-  
10          tutions” and inserting “at such institution”.

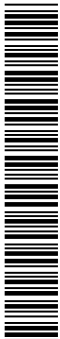
11          (m) Section 362(a)(1) of Public Law 107–56 is  
12          amended by striking “subchapter II or III” and inserting  
13          “subchapter II”.

14          (n) Section 365 of Public Law 107—56 is amended  
15          —

16           (1) by redesignating the 2nd of the 2 sub-  
17           sections designated as subsection (c) (relating to a  
18           clerical amendment) as subsection (d); and

19           (2) by redesignating subsection (f) as sub-  
20           section (e).

21          (o) Section 365(d) of Public Law 107–56 (as so re-  
22          designated by subsection (n) of this section) is amended  
23          by striking “section 5332 (as added by section 112 of this  
24          title)” and inserting “section 5330”.



1 **SEC. 2113. TECHNICAL CORRECTIONS TO OTHER PROVI-**  
2 **SIONS OF LAW.**

3 (a) Section 310(c) of title 31, United States Code,  
4 is amended by striking “the Network” each place such  
5 term appears and inserting “FinCEN”.

6 (b) Section 5312(a)(3)(C) of title 31, United States  
7 Code, is amended by striking “sections 5333 and 5316”  
8 and inserting “sections 5316 and 5331”.

9 (c) Section 5318(i) of title 31, United States Code,  
10 is amended—

11 (1) in paragraph (3)(B), by inserting a comma  
12 after “foreign political figure” the 2nd place such  
13 term appears; and

14 (2) in the heading of paragraph (4), by striking  
15 “DEFINITION” and inserting “DEFINITIONS”.

16 (d) Section 5318(k)(1)(B) of title 31, United States  
17 Code, is amended by striking “section 5318A(f)(1)(B)”  
18 and inserting “section 5318A(e)(1)(B)”.

19 (e) The heading for section 5318A of title 31, United  
20 States Code, is amended to read as follows:

21 **“§ 5318A. Special measures for jurisdictions, financial**  
22 **institutions, international transactions,**  
23 **or types of accounts of primary money**  
24 **laundering concern”.**

25 (f) Section 5318A of title 31, United States Code,  
26 is amended—



1 (1) in subsection (a)(4)(A), by striking “, as de-  
2 fined in section 3 of the Federal Deposit Insurance  
3 Act,” and inserting “ (as defined in section 3 of the  
4 Federal Deposit Insurance Act)”;

5 (2) in subsection (a)(4)(B)(iii), by striking “or  
6 class of transactions” and inserting “class of trans-  
7 actions, or type of account”;

8 (3) in subsection (b)(1)(A), by striking “or  
9 class of transactions to be” and inserting “class of  
10 transactions, or type of account to be”; and

11 (4) in subsection (e)(3), by inserting “or sub-  
12 section (i) or (j) of section 5318” after “identifica-  
13 tion of individuals under this section”.

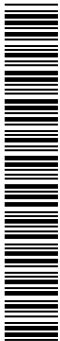
14 (g) Section 5324(b) of title 31, United States Code,  
15 is amended by striking “5333” each place such term ap-  
16 pears and inserting “5331”.

17 (h) Section 5332 of title 31, United States Code, is  
18 amended—

19 (1) in subsection (b)(2), by striking “, subject  
20 to subsection (d) of this section”; and

21 (2) in subsection (c)(1), by striking “, subject  
22 to subsection (d) of this section,”.

23 (i) The table of sections for subchapter II of chapter  
24 53 of title 31, United States Code, is amended by striking



1 the item relating to section 5318A and inserting the fol-  
2 lowing new item:

“5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern.”.

3 (j) Section 18(w)(3) of the Federal Deposit Insurance  
4 Act (12 U.S.C. 1828(w)(3)) is amended by inserting a  
5 comma after “agent of such institution”.

6 (k) Section 21(a)(2) of the Federal Deposit Insur-  
7 ance Act (12 U.S.C. 1829b(a)(2)) is amended by striking  
8 “recognizes that” and inserting “recognizing that”.

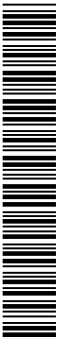
9 (l) Section 626(e) of the Fair Credit Reporting Act  
10 (15 U.S.C. 1681v(e)) is amended by striking “govern-  
11 mental agency” and inserting “government agency”.

12 **SEC. 2114. REPEAL OF REVIEW.**

13 Title III of Public Law 107–56 is amended by strik-  
14 ing section 303 (31 U.S.C. 5311 note).

15 **SEC. 2115. EFFECTIVE DATE.**

16 The amendments made by this subchapter to Public  
17 Law 107–56, the United States Code, the Federal Deposit  
18 Insurance Act, and any other provision of law shall take  
19 effect as if such amendments had been included in Public  
20 Law 107–56, as of the date of the enactment of such Pub-  
21 lic Law, and no amendment made by such Public Law that  
22 is inconsistent with an amendment made by this sub-  
23 chapter shall be deemed to have taken effect.



1 **Subchapter B—Additional enforcement tools**

2 **SEC. 2121. BUREAU OF ENGRAVING AND PRINTING SECUR-**  
3 **RITY PRINTING.**

4 (a) PRODUCTION OF DOCUMENTS.—Section 5114(a)  
5 of title 31, United States Code (relating to engraving and  
6 printing currency and security documents), is amended—

7 (1) by striking “(a) The Secretary of the Treas-  
8 ury” and inserting:

9 “(a) AUTHORITY TO ENGRAVE AND PRINT.—

10 “(1) IN GENERAL.—The Secretary of the  
11 Treasury”; and

12 (2) by adding at the end the following new  
13 paragraphs:

14 “(2) ENGRAVING AND PRINTING FOR OTHER  
15 GOVERNMENTS.—The Secretary of the Treasury  
16 may produce currency, postage stamps, and other  
17 security documents for foreign governments if—

18 “(A) the Secretary of the Treasury deter-  
19 mines that such production will not interfere  
20 with engraving and printing needs of the  
21 United States; and

22 “(B) the Secretary of State determines  
23 that such production would be consistent with  
24 the foreign policy of the United States.



1           “(3) PROCUREMENT GUIDELINES.—Articles,  
2 material, and supplies procured for use in the pro-  
3 duction of currency, postage stamps, and other secu-  
4 rity documents for foreign governments pursuant to  
5 paragraph (2) shall be treated in the same manner  
6 as articles, material, and supplies procured for pub-  
7 lic use within the United States for purposes of title  
8 III of the Act of March 3, 1933 (41 U.S.C. 10a et  
9 seq.; commonly referred to as the Buy American  
10 Act).”.

11           (b) REIMBURSEMENT.—Section 5143 of title 31,  
12 United States Code (relating to payment for services of  
13 the Bureau of Engraving and Printing), is amended—

14           (1) in the first sentence, by inserting “or to a  
15 foreign government under section 5114” after  
16 “agency”;

17           (2) in the second sentence, by inserting “and  
18 other” after “including administrative”; and

19           (3) in the last sentence, by inserting “, and the  
20 Secretary shall take such action, in coordination  
21 with the Secretary of State, as may be appropriate  
22 to ensure prompt payment by a foreign government  
23 of any invoice or statement of account submitted by  
24 the Secretary with respect to services rendered  
25 under section 5114” before the period at the end.



1 **SEC. 2122. CONDUCT IN AID OF COUNTERFEITING.**

2 (a) IN GENERAL.—Section 474(a) of title 18, United  
3 States Code, is amended by inserting after the paragraph  
4 beginning “Whoever has in his control, custody, or posses-  
5 sion any plate” the following:

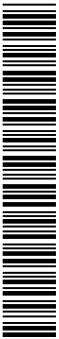
6 “Whoever, with intent to defraud, has in his custody,  
7 control, or possession any material that can be used to  
8 make, alter, forge or counterfeit any obligations and other  
9 securities of the United States or any part of such securi-  
10 ties and obligations, except under the authority of the Sec-  
11 retary of the Treasury; or”.

12 (b) FOREIGN OBLIGATIONS AND SECURITIES.—Sec-  
13 tion 481 of title 18, United States Code, is amended by  
14 inserting after the paragraph beginning “Whoever, with  
15 intent to defraud” the following:

16 “Whoever, with intent to defraud, has in his custody,  
17 control, or possession any material that can be used to  
18 make, alter, forge or counterfeit any obligation or other  
19 security of any foreign government, bank or corporation;  
20 or”.

21 (c) COUNTERFEIT ACTS.—Section 470 of title 18,  
22 United States Code, is amended by striking “or 474” and  
23 inserting “474, or 474A”.

24 (d) MATERIALS USED IN COUNTERFEITING.—Sec-  
25 tion 474A(b) of title 18, United States Code, is amended



1 by striking “any essentially identical” and inserting “any  
2 thing or material made after or in the similitude of any”.

3 **SEC. 2123. REPORTING OF CROSS-BORDER TRANSMITTAL**  
4 **OF FUNDS.**

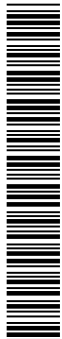
5 Section 5318 of title 31, United States Code, is  
6 amended by adding at the end the following new sub-  
7 section:

8 “(n) REPORTING OF CROSS-BORDER TRANSMITTAL  
9 OF FUNDS.—

10 “(1) IN GENERAL.—Subject to paragraph (3),  
11 the Secretary shall prescribe regulations requiring  
12 such financial institutions as the Secretary deter-  
13 mines to be appropriate to report to the Financial  
14 Crimes Enforcement Network certain cross-border  
15 electronic transmittals of funds relevant to efforts of  
16 the Secretary against money laundering and ter-  
17 rorist financing.

18 “(2) FORM AND MANNER OF REPORTS.—In  
19 prescribing the regulations required under para-  
20 graph (1), the Secretary shall determine the appro-  
21 priate form, manner, content and frequency of filing  
22 of the required reports.

23 “(3) FEASIBILITY REPORT.—Before prescribing  
24 the regulations required under paragraph (1), and  
25 as soon as is practicable after the date of enactment





1 of the 9/11 Recommendations Implementation Act,  
2 the Secretary shall delegate to the Bank Secrecy Act  
3 Advisory Group established by the Secretary the  
4 task of producing a report for the Secretary and the  
5 Congress that—

6 “(A) identifies the information in cross-  
7 border electronic transmittals of funds that is  
8 relevant to efforts against money laundering  
9 and terrorist financing;

10 “(B) makes recommendations regarding  
11 the appropriate form, manner, content and fre-  
12 quency of filing of the required reports; and

13 “(C) identifies the technology necessary for  
14 the Financial Crimes Enforcement Network to  
15 receive, keep, exploit and disseminate informa-  
16 tion from reports of cross-border electronic  
17 transmittals of funds to law enforcement and  
18 other entities engaged in efforts against money  
19 laundering and terrorist financing.

20 The report shall be submitted to the Secretary and  
21 the Congress no later than the end of the 1-year pe-  
22 riod beginning on the date of enactment of such Act.

23 “(4) REGULATIONS.—

24 “(A) IN GENERAL.—Subject to subpara-  
25 graph (B), the regulations required by para-



1 graph (1) shall be prescribed in final form by  
2 the Secretary, in consultation with the Board of  
3 Governors of the Federal Reserve System, be-  
4 fore the end of the 3-year period beginning on  
5 the date of the enactment of the 9/11 Rec-  
6 ommendations Implementation Act.

7 “(B) TECHNOLOGICAL FEASIBILITY.—No  
8 regulations shall be prescribed under this sub-  
9 section before the Secretary certifies to the  
10 Congress that the Financial Crimes Enforce-  
11 ment Network has the technological systems in  
12 place to effectively and efficiently receive, keep,  
13 exploit, and disseminate information from re-  
14 ports of cross-border electronic transmittals of  
15 funds to law enforcement and other entities en-  
16 gaged in efforts against money laundering and  
17 terrorist financing.

18 “(5) RECORDKEEPING.—No financial institu-  
19 tion required to submit reports on certain cross-bor-  
20 der electronic transmittals of funds to the Financial  
21 Crimes Enforcement Network under this subsection  
22 shall be subject to the recordkeeping requirement  
23 under section 21(b)(3) of the Federal Deposit Insur-  
24 ance Act with respect to such transmittals of  
25 funds.”.



1 **SEC. 2124. ENHANCED EFFECTIVENESS OF EXAMINATIONS,**  
 2 **INCLUDING ANTI-MONEY LAUNDERING PRO-**  
 3 **GRAMS.**

4 (a) DEPOSITORY INSTITUTIONS AND DEPOSITORY  
 5 INSTITUTION HOLDING COMPANIES.—Section 10 of the  
 6 Federal Deposit Insurance Act (12 U.S.C. 1820) is  
 7 amended by adding at the end the following new sub-  
 8 section:

9 “(k) POST-EMPLOYMENT LIMITATIONS ON LEADING  
 10 BANK EXAMINERS.—

11 “(1) IN GENERAL.—In the case of any person  
 12 who—

13 “(A) was an officer or employee (including  
 14 any special Government employee) of a Federal  
 15 banking agency or a Federal reserve bank; and

16 “(B) served 2 or more months during the  
 17 final 18 months of such person’s employment  
 18 with such agency or entity as the examiner-in-  
 19 charge (or a functionally equivalent position) of  
 20 a depository institution or depository institution  
 21 holding company with dedicated, overall, contin-  
 22 uous, and ongoing responsibility for the exam-  
 23 ination (or inspection) and supervision of that  
 24 depository institution or depository institution  
 25 holding company,



1 such person may not hold any office, position, or  
2 employment at any such depository institution or de-  
3 pository institution holding company, become a con-  
4 trolling shareholder in, a consultant for, a joint-ven-  
5 ture partner with, or an independent contractor for  
6 (including as attorney, appraiser, or accountant) any  
7 such depository institution or holding company, or  
8 any other company that controls such depository in-  
9 stitution, or otherwise participate in the conduct of  
10 the affairs of any such depository institution or  
11 holding company, during the 1-year period beginning  
12 on such date.

13 “(2) VIOLATORS SUBJECT TO INDUSTRY-WIDE  
14 PROHIBITION ORDERS.—

15 “(A) IN GENERAL.—In addition to any  
16 other penalty which may apply, whenever the  
17 appropriate Federal banking agency determines  
18 that a person subject to paragraph (1) has vio-  
19 lated the prohibition in such paragraph with re-  
20 spect to any insured depository institution or  
21 depository institution holding company or any  
22 other company, the agency shall serve a written  
23 notice or order, in accordance with and subject  
24 to the provisions of section 8(e)(4) for written  
25 notices under paragraphs (1) or (2) of section



1 8(e), upon such person of the agency’s intention  
2 to—

3 “(i) remove such person from office in  
4 any capacity described in paragraph (1);  
5 and

6 “(ii) prohibit any further participation  
7 by such person, in any manner, in the con-  
8 duct of the affairs of any insured deposi-  
9 tory institution or depository institution  
10 holding company for a period of 5 years.

11 “(B) SCOPE OF PROHIBITION ORDER.—

12 Any person subject to an order issued under  
13 this subsection shall be subject to paragraphs  
14 (6) and (7) of section 8(e) in the same manner  
15 and to the same extent as a person subject to  
16 an order issued under such section and sub-  
17 sections (i) and (j) of section 8 and any other  
18 provision of this Act applicable to orders issued  
19 under subsection (e) or (g) shall apply with re-  
20 spect to such order.

21 “(3) REGULATIONS.—

22 “(A) IN GENERAL.—The Federal banking  
23 agencies shall prescribe regulations to imple-  
24 ment this subsection, including the manner for



1 determining which persons are referred to in  
2 paragraph 1(B) taking into account—

3 “(i) the manner in which examiners  
4 and other persons who participate in the  
5 regulation, examination, or monitoring of  
6 depository institutions or depository insti-  
7 tution holding companies are distributed  
8 among such institutions or companies by  
9 such agency, including the number of ex-  
10 aminers and other persons assigned to  
11 each institution or holding company, the  
12 depth and structure of any group so as-  
13 signed within such distribution, and the  
14 factors giving rise to that distribution;

15 “(ii) the number of institutions or  
16 companies each such examiner or other  
17 person is so involved with in any given pe-  
18 riod of assignment;

19 “(iii) the period of time for which  
20 each such examiner or other person is as-  
21 signed to an institution or company, or a  
22 group of institutions or companies, before  
23 reassignment;

24 “(iv) the size of the institutions or  
25 holding companies for which each such



1 person is responsible and the amount of  
2 time devoted to each such institution or  
3 holding company during each examination  
4 period; and

5 “(v) such other factors as the agency  
6 determines to be appropriate.

7 “(B) DETERMINATION OF APPLICA-  
8 BILITY.—The regulations prescribed or orders  
9 issued under this subparagraph by an appro-  
10 priate Federal banking agency shall include a  
11 process, initiated by application or otherwise,  
12 for determining whether any person who ceases  
13 to be, or intends to cease to be, an examiner of,  
14 or a person having supervisory authority over,  
15 insured depository institutions or depository in-  
16 stitution holding companies for or on behalf of  
17 such agency is subject to the limitations of this  
18 subsection with respect to any particular in-  
19 sured depository institution or depository insti-  
20 tution holding company.

21 “(C) CONSULTATION.—The Federal bank-  
22 ing agencies shall consult with each other for  
23 the purpose of assuring that the rules and regu-  
24 lations issued by the agencies under subpara-  
25 graph (A) are, to the extent possible, consistent,



1 comparable, and practicable, taking into ac-  
2 count any differences in the supervisory pro-  
3 grams utilized by the agencies for the super-  
4 vision of depository institutions and depository  
5 institution holding companies.

6 “(4) WAIVER.—A Federal banking agency may  
7 waive, on a case-by-case basis, the restrictions im-  
8 posed by this subsection if—

9 “(A) the head of the agency certifies in  
10 writing that the grant of such waiver would be  
11 not inconsistent with the public interest; and

12 “(B) the waiver is provided in advance be-  
13 fore the person becomes affiliated in any way  
14 with the depository institution or depository in-  
15 stitution holding company.

16 “(5) DEFINITIONS AND RULES OF CONSTRUC-  
17 TION.—For purposes of this subsection, the fol-  
18 lowing definitions and rules shall apply:

19 “(A) DEPOSITORY INSTITUTION.—The  
20 term ‘depository institution’ includes an unin-  
21 sured branch or agency of a foreign bank if  
22 such branch or agency is located in any State.

23 “(B) DEPOSITORY INSTITUTION HOLDING  
24 COMPANY.—The term ‘depository institution  
25 holding company’ includes any foreign bank or





1 company described in section 8(a) of the Inter-  
2 national Banking Act of 1978.

3 “(C) HEAD OF THE AGENCY.—The term  
4 ‘the head of agency’ means—

5 “(i) the Comptroller of the Currency,  
6 in the case of the Office of the Comptroller  
7 of the Currency;

8 “(ii) the Chairman of the Board of  
9 Governors of the Federal Reserve System,  
10 in the case of the Board of Governors of  
11 the Federal Reserve System;

12 “(iii) the Chairperson of the Board of  
13 Directors, in the case of the Federal De-  
14 posit Insurance Corporation; and

15 “(iv) the Director, in the case of the  
16 Office of Thrift Supervision.

17 “(D) RULE OF CONSTRUCTION FOR CON-  
18 SULTANTS AND INDEPENDENT CONTRAC-  
19 TORS.—A person shall be deemed to act as a  
20 consultant or independent contractor (including  
21 as an attorney, appraiser, or accountant) for a  
22 depository institution or a depository holding  
23 company only if such person directly works on  
24 matters for, or on behalf of, such depository in-  
25 stitution or depository holding company.



1                   “(E) APPROPRIATE AGENCY FOR CERTAIN  
2                   OTHER COMPANIES.—The term ‘appropriate  
3                   Federal banking agency’ means, with respect to  
4                   a company that is not a depository institution  
5                   or depository institution holding company, the  
6                   Federal banking agency on whose behalf the  
7                   person described in paragraph (1) performed  
8                   the functions described in paragraph (3).”.

9                   (b) CREDIT UNIONS.—Section 206 of the Federal  
10                  Credit Union Act (12 U.S.C. 1786) is amended by adding  
11                  at the end the following new subsection:

12                  “(w) POST-EMPLOYMENT LIMITATIONS ON EXAM-  
13                  INERS.—

14                  “(1) REGULATIONS REQUIRED.—The Board  
15                  shall consult with the Federal banking agencies and  
16                  prescribe regulations imposing the same limitations  
17                  on persons employed by or on behalf of the Board  
18                  as leading examiners of, or functionally equivalent  
19                  positions with respect to, credit unions as are appli-  
20                  cable under section 10(k) of the Federal Deposit In-  
21                  surance Act, taking into account all the require-  
22                  ments and factors described in paragraphs (3) and  
23                  (4) of such section.

24                  “(2) ENFORCEMENT.—The Board shall issue  
25                  orders under subsection (g) with respect to any per-



1 son who violates any regulation prescribed pursuant  
2 to paragraph (1) to—

3 “(A) remove such person from office in  
4 any capacity with respect to a credit union; and

5 “(B) prohibit any further participation by  
6 such person, in any manner, in the conduct of  
7 the affairs of any credit union for a period of  
8 5 years.

9 “(3) SCOPE OF PROHIBITION ORDER.—Any per-  
10 son subject to an order issued under this subsection  
11 shall be subject to paragraphs (5) and (7) of sub-  
12 section (g) in the same manner and to the same ex-  
13 tent as a person subject to an order issued under  
14 such subsection and subsection (l) and any other  
15 provision of this Act applicable to orders issued  
16 under subsection (g) shall apply with respect to such  
17 order.”.

18 (c) STUDY OF EXAMINER HIRING AND RETEN-  
19 TION.—

20 (1) STUDY REQUIRED.—The Board of Directors  
21 of the Federal Deposit Insurance Corporation, the  
22 Comptroller of the Currency, the Director of the Of-  
23 fice of Thrift Supervision, the Board of Governors of  
24 the Federal Reserve System, and the National Cred-  
25 it Union Administration Board, acting through the



1 Financial Institutions Examination Council, shall  
2 conduct a study of efforts and proposals for—

3 (A) retaining the services of experienced  
4 and highly qualified examiners and supervisors  
5 already employed by such agencies; and

6 (B) continuing to attract such examiners  
7 and supervisors on an-ongoing basis to the ex-  
8 tent necessary to fulfill the agencies' obligations  
9 to maintain the safety and soundness of the  
10 Nation's depository institutions.

11 (2) REPORT.—Before the end of the 1-year pe-  
12 riod beginning on the date of the enactment of this  
13 Act, the agencies conducting the study under para-  
14 graph (1) shall submit a report containing the find-  
15 ings and conclusions of such agencies with respect to  
16 such study, together with such recommendations for  
17 administrative or legislative changes as the agencies  
18 determine to be appropriate.

19 **Subchapter C—Unlawful Internet Gambling**  
20 **Funding Prohibition**

21 **SEC. 2131. SHORT TITLE.**

22 This subchapter may be cited as the “Unlawful Inter-  
23 net Gambling Funding Prohibition Act”.

24 **SEC. 2132. FINDINGS.**

25 The Congress finds as follows:



1 (1) Internet gambling is primarily funded  
2 through personal use of bank instruments, including  
3 credit cards and wire transfers.

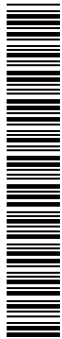
4 (2) The National Gambling Impact Study Com-  
5 mission in 1999 recommended the passage of legisla-  
6 tion to prohibit wire transfers to Internet gambling  
7 sites or the banks which represent them.

8 (3) Internet gambling is a major cause of debt  
9 collection problems for insured depository institu-  
10 tions and the consumer credit industry.

11 (4) Internet gambling conducted through off-  
12 shore jurisdictions has been identified by United  
13 States law enforcement officials as a significant  
14 money laundering vulnerability.

15 **SEC. 2133. POLICIES AND PROCEDURES REQUIRED TO PRE-**  
16 **VENT PAYMENTS FOR UNLAWFUL INTERNET**  
17 **GAMBLING.**

18 (a) REGULATIONS.—Before the end of the 6-month  
19 period beginning on the date of the enactment of this sub-  
20 chapter, the Federal functional regulators shall prescribe  
21 regulations requiring any designated payment system to  
22 establish policies and procedures reasonably designed to  
23 identify and prevent restricted transactions in any of the  
24 following ways:



1           (1) The establishment of policies and proce-  
2           dures that—

3                   (A) allow the payment system and any per-  
4                   son involved in the payment system to identify  
5                   restricted transactions by means of codes in au-  
6                   thorization messages or by other means; and

7                   (B) block restricted transactions identified  
8                   as a result of the policies and procedures devel-  
9                   oped pursuant to subparagraph (A).

10           (2) The establishment of policies and proce-  
11           dures that prevent the acceptance of the products or  
12           services of the payment system in connection with a  
13           restricted transaction.

14           (b) REQUIREMENTS FOR POLICIES AND PROCE-  
15           DURES.—In prescribing regulations pursuant to sub-  
16           section (a), the Federal functional regulators shall—

17                   (1) identify types of policies and procedures, in-  
18                   cluding nonexclusive examples, which would be  
19                   deemed to be “reasonably designed to identify” and  
20                   “reasonably designed to block” or to “prevent the  
21                   acceptance of the products or services” with respect  
22                   to each type of transaction, such as, should credit  
23                   card transactions be so designated, identifying trans-  
24                   actions by a code or codes in the authorization mes-



1 sage and denying authorization of a credit card  
2 transaction in response to an authorization message;

3 (2) to the extent practical, permit any partici-  
4 pant in a payment system to choose among alter-  
5 native means of identifying and blocking, or other-  
6 wise preventing the acceptance of the products or  
7 services of the payment system or participant in con-  
8 nection with, restricted transactions; and

9 (3) consider exempting restricted transactions  
10 from any requirement under subsection (a) if the  
11 Federal functional regulators find that it is not rea-  
12 sonably practical to identify and block, or otherwise  
13 prevent, such transactions.

14 (c) COMPLIANCE WITH PAYMENT SYSTEM POLICIES  
15 AND PROCEDURES.—A creditor, credit card issuer, finan-  
16 cial institution, operator of a terminal at which an elec-  
17 tronic fund transfer may be initiated, money transmitting  
18 business, or international, national, regional, or local net-  
19 work utilized to effect a credit transaction, electronic fund  
20 transfer, or money transmitting service, or a participant  
21 in such network, meets the requirement of subsection (a)  
22 if—

23 (1) such person relies on and complies with the  
24 policies and procedures of a designated payment sys-  
25 tem of which it is a member or participant to—



1 (A) identify and block restricted trans-  
2 actions; or

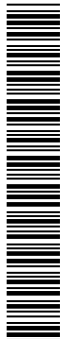
3 (B) otherwise prevent the acceptance of  
4 the products or services of the payment system,  
5 member, or participant in connection with re-  
6 stricted transactions; and

7 (2) such policies and procedures of the des-  
8 ignated payment system comply with the require-  
9 ments of regulations prescribed under subsection  
10 (a).

11 (d) ENFORCEMENT.—

12 (1) IN GENERAL.—This section shall be en-  
13 forced by the Federal functional regulators and the  
14 Federal Trade Commission under applicable law in  
15 the manner provided in section 505(a) of the  
16 Gramm-Leach-Bliley Act.

17 (2) FACTORS TO BE CONSIDERED.—In consid-  
18 ering any enforcement action under this subsection  
19 against any payment system, or any participant in  
20 a payment system that is a creditor, credit card  
21 issuer, financial institution, operator of a terminal at  
22 which an electronic fund transfer may be initiated,  
23 money transmitting business, or international, na-  
24 tional, regional, or local network utilized to effect a  
25 credit transaction, electronic fund transfer, or money





1 transmitting service, or a participant in such net-  
2 work, the Federal functional regulators and the Fed-  
3 eral Trade Commission shall consider the following  
4 factors:

5 (A) The extent to which such person is ex-  
6 tending credit or transmitting funds knowing  
7 the transaction is in connection with unlawful  
8 Internet gambling.

9 (B) The history of such person in extend-  
10 ing credit or transmitting funds knowing the  
11 transaction is in connection with unlawful  
12 Internet gambling.

13 (C) The extent to which such person has  
14 established and is maintaining policies and pro-  
15 cedures in compliance with regulations pre-  
16 scribed under this subsection.

17 (D) The feasibility that any specific rem-  
18 edy prescribed can be implemented by such per-  
19 son without substantial deviation from normal  
20 business practice.

21 (E) The costs and burdens the specific  
22 remedy will have on such person.

23 **SEC. 2134. DEFINITIONS.**

24 For purposes of this subchapter, the following defini-  
25 tions shall apply:



1           (1) RESTRICTED TRANSACTION.—The term “re-  
2           stricted transaction” means any transaction or  
3           transmittal to any person engaged in the business of  
4           betting or wagering, in connection with the partici-  
5           pation of another person in unlawful Internet gam-  
6           bling, of—

7                   (A) credit, or the proceeds of credit, ex-  
8                   tended to or on behalf of such other person (in-  
9                   cluding credit extended through the use of a  
10                  credit card);

11                  (B) an electronic fund transfer or funds  
12                  transmitted by or through a money transmit-  
13                  ting business, or the proceeds of an electronic  
14                  fund transfer or money transmitting service,  
15                  from or on behalf of the other person;

16                  (C) any check, draft, or similar instrument  
17                  which is drawn by or on behalf of the other per-  
18                  son and is drawn on or payable at or through  
19                  any financial institution; or

20                  (D) the proceeds of any other form of fi-  
21                  nancial transaction as the Federal functional  
22                  regulators may prescribe by regulation which  
23                  involves a financial institution as a payor or fi-  
24                  nancial intermediary on behalf of or for the  
25                  benefit of the other person.



1           (2) BETS OR WAGERS.—The term “bets or  
2 wagers”—

3           (A) means the staking or risking by any  
4 person of something of value upon the outcome  
5 of a contest of others, a sporting event, or a  
6 game subject to chance, upon an agreement or  
7 understanding that the person or another per-  
8 son will receive something of greater value than  
9 the amount staked or risked in the event of a  
10 certain outcome;

11           (B) includes the purchase of a chance or  
12 opportunity to win a lottery or other prize  
13 (which opportunity to win is predominantly sub-  
14 ject to chance);

15           (C) includes any scheme of a type de-  
16 scribed in section 3702 of title 28, United  
17 States Code;

18           (D) includes any instructions or informa-  
19 tion pertaining to the establishment or move-  
20 ment of funds in an account by the bettor or  
21 customer with the business of betting or wager-  
22 ing; and

23           (E) does not include—

24           (i) any activity governed by the secu-  
25 rities laws (as that term is defined in sec-



1                   tion 3(a)(47) of the Securities Exchange  
2                   Act of 1934) for the purchase or sale of se-  
3                   curities (as that term is defined in section  
4                   3(a)(10) of such Act);

5                   (ii) any transaction conducted on or  
6                   subject to the rules of a registered entity  
7                   or exempt board of trade pursuant to the  
8                   Commodity Exchange Act;

9                   (iii) any over-the-counter derivative  
10                  instrument;

11                  (iv) any other transaction that—

12                   (I) is excluded or exempt from  
13                   regulation under the Commodity Ex-  
14                   change Act; or

15                   (II) is exempt from State gaming  
16                   or bucket shop laws under section  
17                   12(e) of the Commodity Exchange Act  
18                   or section 28(a) of the Securities Ex-  
19                   change Act of 1934;

20                  (v) any contract of indemnity or guar-  
21                  antee;

22                  (vi) any contract for insurance;

23                  (vii) any deposit or other transaction  
24                  with a depository institution (as defined in



1 section 3(c) of the Federal Deposit Insur-  
2 ance Act);

3 (viii) any participation in a simulation  
4 sports game or an educational game or  
5 contest that—

6 (I) is not dependent solely on the  
7 outcome of any single sporting event  
8 or nonparticipant’s singular individual  
9 performance in any single sporting  
10 event;

11 (II) has an outcome that reflects  
12 the relative knowledge and skill of the  
13 participants with such outcome deter-  
14 mined predominantly by accumulated  
15 statistical results of sporting events;  
16 and

17 (III) offers a prize or award to a  
18 participant that is established in ad-  
19 vance of the game or contest and is  
20 not determined by the number of par-  
21 ticipants or the amount of any fees  
22 paid by those participants; and

23 (ix) any lawful transaction with a  
24 business licensed or authorized by a State,  
25 and for purposes of this clause, the term



1           “lawful transaction” means any trans-  
2           action that is lawful under all applicable  
3           Federal laws and all applicable State laws  
4           of both the State in which the licensed or  
5           authorized business is located and the  
6           State where the bet is initiated.

7           (3) DESIGNATED PAYMENT SYSTEM DE-  
8           FINED.—The term “designated payment system”  
9           means any system utilized by any creditor, credit  
10          card issuer, financial institution, operator of a ter-  
11          minal at which an electronic fund transfer may be  
12          initiated, money transmitting business, or inter-  
13          national, national, regional, or local network utilized  
14          to effect a credit transaction, electronic fund trans-  
15          fer, or money transmitting service, or any partici-  
16          pant in such network, that the Federal functional  
17          regulators determine, by regulation or order, could  
18          be utilized in connection with, or to facilitate, any  
19          restricted transaction.

20          (4) FEDERAL FUNCTIONAL REGULATOR.—The  
21          term “Federal functional regulator” has the same  
22          meaning as in section 509(2) of the Gramm-Leach-  
23          Bliley Act.



1           (5) INTERNET.—The term “Internet” means  
 2           the international computer network of interoperable  
 3           packet switched data networks.

4           (6) UNLAWFUL INTERNET GAMBLING.—The  
 5           term “unlawful Internet gambling” means to place,  
 6           receive, or otherwise transmit a bet or wager by any  
 7           means which involves the use, at least in part, of the  
 8           Internet where such bet or wager is unlawful under  
 9           any applicable Federal or State law in the State in  
 10          which the bet or wager is initiated, received, or oth-  
 11          erwise made.

12          (7) OTHER TERMS.—

13           (A) CREDIT; CREDITOR; AND CREDIT  
 14           CARD.—The terms “credit”, “creditor”, and  
 15           “credit card” have the meanings given such  
 16           terms in section 103 of the Truth in Lending  
 17           Act.

18           (B) ELECTRONIC FUND TRANSFER.—The  
 19           term “electronic fund transfer”—

20           (i) has the meaning given such term  
 21           in section 903 of the Electronic Fund  
 22           Transfer Act; and

23           (ii) includes any fund transfer covered  
 24           by Article 4A of the Uniform Commercial  
 25           Code, as in effect in any State.



1 (C) FINANCIAL INSTITUTION.—The term  
2 “financial institution”—

3 (i) has the meaning given such term  
4 in section 903 of the Electronic Fund  
5 Transfer Act; and

6 (ii) includes any financial institution,  
7 as defined in section 509(3) of the  
8 Gramm-Leach-Bliley Act.

9 (D) MONEY TRANSMITTING BUSINESS AND  
10 MONEY TRANSMITTING SERVICE.—The terms  
11 “money transmitting business” and “money  
12 transmitting service” have the meanings given  
13 such terms in section 5330(d) of title 31,  
14 United States Code.

15 **SEC. 2135. COMMON SENSE RULE OF CONSTRUCTION.**

16 No provision of this subchapter shall be construed as  
17 altering, limiting, extending, changing the status of, or  
18 otherwise affecting any law relating to, affecting, or regu-  
19 lating gambling within the United States.

20 **Subtitle F—Criminal History**  
21 **Background Checks**

[Subtitles F through H of title II of the  
Amendment in the Nature of a Substitute con-  
sist of subtitles F through H of title II of the





bill H.R. 10, as introduced on September 24,  
2004】

1 **TITLE III—BORDER SECURITY**  
2 **AND TERRORIST TRAVEL**

【Title III of the Amendment in the Nature  
of a Substitute consists of title III of the bill  
H.R. 10, as introduced on September 24,  
2004】

3 **TITLE IV—INTERNATIONAL CO-**  
4 **OPERATION AND COORDINA-**  
5 **TION**

【Subtitle A of title IV of the Amendment  
in the Nature of a Substitute consists of sub-  
title A of title IV of the bill H.R. 10, as intro-  
duced on September 24, 2004】

6 **Subtitle B—Prevent the Continued**  
7 **Growth of Terrorism**

8 **CHAPTER 1—UNITED STATES PUBLIC**  
9 **DIPLOMACY**

【Chapter 1 of title IV of the Amendment  
in the Nature of a Substitute consists of chap-  
ter 1 of title IV of the bill H.R. 10, as intro-  
duced on September 24, 2004】



1           **CHAPTER 2—UNITED STATES**  
2           **MULTILATERAL DIPLOMACY**

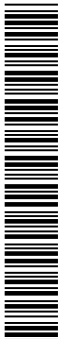
          【Sections 4031 and 4032 of chapter 2 of subtitle B of title IV of the Amendment in the Nature of a Substitute consist of sections 4031 and 4032 of chapter 2 of subtitle B of title IV of the bill H.R. 10, as introduced on September 24, 2004】

3   **SEC. 4033. LEADERSHIP AND MEMBERSHIP OF INTER-**  
4           **NATIONAL ORGANIZATIONS.**

5           (a) UNITED STATES POLICY.—The President, acting  
6 through the Secretary of State, the relevant United States  
7 chiefs of mission, and, where appropriate, the Secretary  
8 of the Treasury, shall use the voice, vote, and influence  
9 of the United States to—

10           (1) where appropriate, reform the criteria for  
11 leadership and, in appropriate cases, for member-  
12 ship, at all United Nations bodies and at other inter-  
13 national organizations and multilateral institutions  
14 to which the United States is a member so as to ex-  
15 clude countries that violate the principles of the spe-  
16 cific organization;

17           (2) make it a policy of the United Nations and  
18 other international organizations and multilateral in-  
19 stitutions of which the United States is a member



1 that a member country may not stand in nomination  
2 for membership or in nomination or in rotation for  
3 a leadership position in such bodies if the member  
4 country is subject to sanctions imposed by the  
5 United Nations Security Council; and

6 (3) work to ensure that no member country  
7 stand in nomination for membership, or in nomina-  
8 tion or in rotation for a leadership position in such  
9 organizations, or for membership on the United Na-  
10 tions Security Council, if the member country is sub-  
11 ject to a determination under section 6(j)(1)(A) of  
12 the Export Administration Act of 1979 (50 U.S.C.  
13 App. 2405(j)(1)(A)), section 620A(a) of the Foreign  
14 Assistance Act of 1961 (22 U.S.C. 2371(a)), or sec-  
15 tion 40(d) of the Arms Export Control Act (22  
16 U.S.C. 2780(d)).

17 (b) REPORT TO CONGRESS.—Not later than 15 days  
18 after a country subject to a determination under one or  
19 more of the provisions of law specified in subsection (a)(3)  
20 is selected for membership or a leadership post in an inter-  
21 national organization of which the United States is a  
22 member or for membership on the United Nations Secu-  
23 rity Council, the Secretary of State shall submit to the  
24 Committee on International Relations of the House of  
25 Representatives and the Committee on Foreign Relations



1 of the Senate a report on any steps taken pursuant to  
2 subsection (a)(3).

3 **SEC. 4034. INCREASED TRAINING IN MULTILATERAL DIPLO-**  
4 **MACY.**

【Section 4034 of title IV of the Amend-  
ment in the Nature of a Substitute consists of  
section 4034 of title IV of the bill H.R. 10, as  
introduced on September 24, 2004】

5 **SEC. 4035. IMPLEMENTATION AND ESTABLISHMENT OF OF-**  
6 **FICE ON MULTILATERAL NEGOTIATIONS.**

7 (a) ESTABLISHMENT OF OFFICE.—The Secretary of  
8 State is authorized to establish, within the Bureau of  
9 International Organizational Affairs, an Office on Multi-  
10 lateral Negotiations to be headed by a Special Representa-  
11 tive for Multilateral Negotiations (in this section referred  
12 to as the “Special Representative”).

13 (b) APPOINTMENT.—The Special Representative  
14 shall be appointed by the President and shall have the  
15 rank of Ambassador-at-Large. At the discretion of the  
16 President another official at the Department may serve  
17 as the Special Representative.

18 (c) STAFFING.—The Special Representative shall  
19 have a staff of Foreign Service and civil service officers  
20 skilled in multilateral diplomacy.



1 (d) DUTIES.—The Special Representative shall have  
2 the following responsibilities:

3 (1) IN GENERAL.—The primary responsibility  
4 of the Special Representative shall be to assist in the  
5 organization of, and preparation for, United States  
6 participation in multilateral negotiations, including  
7 advocacy efforts undertaken by the Department of  
8 State and other United States Government agencies.

9 (2) CONSULTATIONS.—The Special Representa-  
10 tive shall consult with Congress, international orga-  
11 nizations, nongovernmental organizations, and the  
12 private sector on matters affecting multilateral nego-  
13 tiations.

14 (3) ADVISORY ROLE.—The Special Representa-  
15 tive shall advise the Assistant Secretary for Inter-  
16 national Organizational Affairs and, as appropriate,  
17 the Secretary of State, regarding advocacy at inter-  
18 national organizations, multilateral institutions, and  
19 negotiations, and shall make recommendations  
20 regarding—

21 (A) effective strategies (and tactics) to  
22 achieve United States policy objectives at multi-  
23 lateral negotiations;

24 (B) the need for and timing of high level  
25 intervention by the President, the Secretary of



1 State, the Deputy Secretary of State, and other  
2 United States officials to secure support from  
3 key foreign government officials for United  
4 States positions at such organizations, institu-  
5 tions, and negotiations; and

6 (C) the composition of United States dele-  
7 gations to multilateral negotiations.

8 (4) ANNUAL DIPLOMATIC MISSIONS OF MULTI-  
9 LATERAL ISSUES.—The Special Representative, in  
10 coordination with the Assistant Secretary for Inter-  
11 national Organizational Affairs, shall organize an-  
12 nual diplomatic missions to appropriate foreign  
13 countries to conduct consultations between principal  
14 officers responsible for advising the Secretary of  
15 State on international organizations and high-level  
16 representatives of the governments of such foreign  
17 countries to promote the United States agenda at  
18 the United Nations General Assembly and other key  
19 international fora (such as the United Nations  
20 Human Rights Commission).

21 (5) LEADERSHIP AND MEMBERSHIP OF INTER-  
22 NATIONAL ORGANIZATIONS.—The Special Represent-  
23 ative, in coordination with the Assistant Secretary of  
24 International Organizational Affairs, shall direct the  
25 efforts of the United States to reform the criteria



1 for leadership of and membership in international  
2 organizations as described in section 4033.

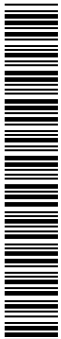
3 (6) PARTICIPATION IN MULTILATERAL NEGOTIATIONS.—The Secretary of State may direct the  
4 Special Representative to serve as a member of a  
5 United States delegation to any multilateral negotia-  
6 tion.  
7

8 (7) COORDINATION WITH THE DEPARTMENT OF  
9 THE TREASURY.—

10 (A) COORDINATION AND CONSULTATION.—  
11 The Special Representative shall coordinate and  
12 consult with the relevant staff at the Depart-  
13 ment of the Treasury in order to prepare rec-  
14 ommendations for the Secretary of State re-  
15 garding multilateral negotiations involving  
16 international financial institutions and other  
17 multilateral financial policymaking bodies.

18 (B) NEGOTIATING AUTHORITY CLARI-  
19 FIED.—Notwithstanding any other provision of  
20 law, the Secretary of the Treasury shall remain  
21 the lead representative and lead negotiator for  
22 the United States within the international fi-  
23 nancial institutions and other multilateral fi-  
24 nancial policymaking bodies.

25 (C) DEFINITIONS.—In this paragraph:



1 (i) INTERNATIONAL FINANCIAL INSTI-  
2 TUTIONS.—The term “international finan-  
3 cial institutions” has the meaning given in  
4 section 1701(c)(2) of the International Fi-  
5 nancial Institutions Act.

6 (ii) OTHER MULTILATERAL FINAN-  
7 CIAL POLICYMAKING BODIES.—The term  
8 “other multilateral financial policymaking  
9 bodies” means—

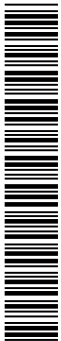
10 (I) the Financial Action Task  
11 Force at the Organization for Eco-  
12 nomic Cooperation and Development;

13 (II) the international network of  
14 financial intelligence units known as  
15 the “Egmont Group”;

16 (III) the United States, Canada,  
17 the United Kingdom, France, Ger-  
18 many, Italy, Japan, and Russia, when  
19 meeting as the Group of Eight; and

20 (IV) any other multilateral finan-  
21 cial policymaking group in which the  
22 Secretary of the Treasury represents  
23 the United States.

24 (iii) FINANCIAL ACTION TASK  
25 FORCE.—The term “Financial Action Task





1 Force” means the international grouping  
2 of countries that meets periodically to ad-  
3 dress issues related to money laundering,  
4 terrorist financing, and other financial  
5 crimes.

## 6 **CHAPTER 3—OTHER PROVISIONS**

【Chapter 3 of subtitle B of title IV of the  
Amendment in the Nature of a Substitute con-  
sists of chapter 3 of subtitles B of title IV of  
the bill H.R. 10, as introduced on September  
24, 2004】

## 7 **Subtitle C—Reform of Designation** 8 **of Foreign Terrorist Organizations**

【Subtitle C of title IV of the Amendment  
in the Nature of a Substitute consists of sub-  
title C of title IV of the bill H.R. 10, as intro-  
duced on September 24, 2004】

## 9 **Subtitle D—Afghanistan Freedom** 10 **Support Act Amendments of 2004**

### 11 **SEC. 4061. SHORT TITLE.**

12 This subtitle may be cited as the “Afghanistan Free-  
13 dom Support Act Amendments of 2004”.

### 14 **SEC. 4062. COORDINATION OF ASSISTANCE FOR AFGHANI-** 15 **STAN.**

16 (a) FINDINGS.—Congress finds that—



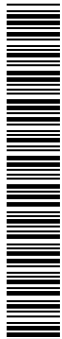
1           (1) the Final Report of the National Commis-  
2           sion on Terrorist Attacks Upon the United States  
3           criticized the provision of United States assistance  
4           to Afghanistan for being too inflexible; and

5           (2) the Afghanistan Freedom Support Act of  
6           2002 (Public Law 107–327; 22 U.S.C. 7501 et seq.)  
7           contains provisions that provide for flexibility in the  
8           provision of assistance for Afghanistan and are not  
9           subject to the requirements of typical foreign assist-  
10          ance programs and provide for the designation of a  
11          coordinator to oversee United States assistance for  
12          Afghanistan.

13          (b) DESIGNATION OF COORDINATOR.—Section  
14          104(a) of the Afghanistan Freedom Support Act of 2002  
15          (22 U.S.C. 7514(a)) is amended in the matter preceding  
16          paragraph (1) by striking “is strongly urged to” and in-  
17          serting “shall”.

18          (c) OTHER MATTERS.—Section 104 of such Act (22  
19          U.S.C. 7514) is amended by adding at the end the fol-  
20          lowing:

21          “(c) PROGRAM PLAN.—The coordinator designated  
22          under subsection (a) shall annually submit to the Commit-  
23          tees on International Relations and Appropriations of the  
24          House of Representatives and the Committees on Foreign  
25          Relations and Appropriations of the Senate the Adminis-

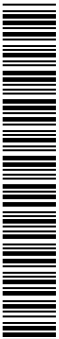


1 tration’s plan for assistance to Afghanistan together with  
2 a description of such assistance in prior years.

3 “(d) COORDINATION WITH INTERNATIONAL COMMU-  
4 NITY.—The coordinator designated under subsection (a)  
5 shall work with the international community and the Gov-  
6 ernment of Afghanistan to ensure that assistance to Af-  
7 ghanistan is implemented in a coherent, consistent, and  
8 efficient manner to prevent duplication and waste. The co-  
9 ordinator designated under subsection (a) shall work  
10 through the Secretary of the Treasury and the United  
11 States Executive Directors at the international financial  
12 institutions in order to effectuate these responsibilities  
13 within the international financial institutions. The term  
14 ‘international financial institution’ has the meaning given  
15 in section 1701(c)(2) of the International Financial Insti-  
16 tutions Act.”.

17 **SEC. 4063. GENERAL PROVISIONS RELATING TO THE AF-**  
18 **GHANISTAN FREEDOM SUPPORT ACT OF 2002.**

【Section 4063 and the remaining sections  
of subtitle D of title IV of the Amendment in  
the Nature of a Substitute consist of section  
4063 and the remaining sections of subtitle D  
of title IV of the bill H.R. 10, as introduced on  
September 24, 2004】



1 **Subtitle E—Provisions Relating to**  
2 **Saudi Arabia and Pakistan**

    【Subtitles E through G of title IV of the  
Amendment in the Nature of a Substitute con-  
sist of subtitles E through G of title IV of the  
bill H.R. 10, as introduced on September 24,  
2004】

3 **Subtitle H—Improving Inter-**  
4 **national Standards and Co-**  
5 **operation to Fight Terrorist Fi-**  
6 **nancing**

7 **SEC. 4111. SENSE OF THE CONGRESS REGARDING SUCCESS**  
8 **IN MULTILATERAL ORGANIZATIONS.**

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

10 (1) The global war on terrorism and cutting off  
11 terrorist financing is a policy priority for the United  
12 States and its partners, working bilaterally and mul-  
13 tilaterally through the United Nations (UN), the  
14 UN Security Council and its Committees, such as  
15 the 1267 and 1373 Committees, the Financial Ac-  
16 tion Task Force (FATF) and various international  
17 financial institutions, such as the International Mon-  
18 etary Fund (IMF), the International Bank for Re-  
19 construction and Development (IBRD), and the re-



1 regional multilateral development banks, and other  
2 multilateral fora.

3 (2) The Secretary of the Treasury has engaged  
4 the international financial community in the global  
5 fight against terrorist financing. Specifically, the De-  
6 partment of the Treasury helped redirect the focus  
7 of the Financial Action Task Force on the new  
8 threat posed by terrorist financing to the inter-  
9 national financial system, resulting in the establish-  
10 ment of the FATF's Eight Special Recommenda-  
11 tions on Terrorist Financing as the international  
12 standard on combating terrorist financing. The Sec-  
13 retary of the Treasury has engaged the Group of  
14 Seven and the Group of Twenty Finance Ministers  
15 to develop action plans to curb the financing of ter-  
16 ror. In addition, other economic and regional fora,  
17 such as the Asia-Pacific Economic Cooperation  
18 (APEC) Forum, the Western Hemisphere Financial  
19 Ministers, have been used to marshal political will  
20 and actions in support of countering the financing of  
21 terrorism (CFT) standards.

22 (3) FATF's Forty Recommendations on Money  
23 Laundering and the Eight Special Recommendations  
24 on Terrorist Financing are the recognized global  
25 standards for fighting money laundering and ter-



1       rorist financing. The FATF has engaged in an as-  
2       sessment process for jurisdictions based on their  
3       compliance with these standards.

4           (4) In March 2004, the IMF and IBRD Boards  
5       agreed to make permanent a pilot program of col-  
6       laboration with the FATF to assess global compli-  
7       ance with the FATF Forty Recommendations on  
8       Money Laundering and the Eight Special Rec-  
9       ommendations on Terrorist Financing. As a result,  
10      anti-money laundering (AML) and combating the fi-  
11      nancing of terrorism (CFT) assessments are now a  
12      regular part of their Financial Sector Assessment  
13      Program (FSAP) and Offshore Financial Center as-  
14      sessments, which provide for a comprehensive anal-  
15      ysis of the strength of a jurisdiction's financial sys-  
16      tem. These reviews assess potential systemic  
17      vulnerabilities, consider sectoral development needs  
18      and priorities, and review the state of implementa-  
19      tion of and compliance with key financial codes and  
20      regulatory standards, among them the AML and  
21      CFT standards.

22           (5) To date, 70 FSAPs have been conducted,  
23      with over 24 of those incorporating AML and CFT  
24      assessments. The international financial institutions  
25      (IFIs), the FATF, and the FATF-style regional



1 bodies together are expected to assess AML and  
2 CFT regimes in up to 40 countries or jurisdictions  
3 per year. This will help countries and jurisdictions  
4 identify deficiencies in their AML and CFT regimes  
5 and help focus technical assistance (TA) efforts.

6 (6) TA programs from the United States and  
7 other nations, coordinated with the Department of  
8 State and other departments and agencies, are play-  
9 ing an important role in helping countries and juris-  
10 dictions address shortcomings in their AML and  
11 CFT regimes and bringing their regimes into con-  
12 formity with international standards. Training is co-  
13 ordinated within the United States Government,  
14 which leverages multilateral organizations and bodies  
15 and international financial institutions to inter-  
16 nationalize the conveyance of technical assistance.

17 (7) In fulfilling its duties in advancing incorpora-  
18 tion of AML and CFT standards into the IFIs as  
19 part of the IFIs' work on protecting the integrity of  
20 the international monetary system, the Department  
21 of the Treasury, under the guidance of the Secretary  
22 of the Treasury, has effectively brought together all  
23 of the key United States Government agencies. In  
24 particular, United States Government agencies con-  
25 tinue to work together to foster broad support for



1 this important undertaking in various multilateral  
2 fora, and United States Government agencies recog-  
3 nize the need for close coordination and communica-  
4 tion within our own government.

5 (b) SENSE OF THE CONGRESS.—It is the sense of  
6 the Congress that the Secretary of the Treasury should  
7 continue to promote the dissemination of international  
8 AML and CFT standards, and to press for full implemen-  
9 tation of the FATF 40 + 8 Recommendations by all coun-  
10 tries in order to curb financial risks and hinder terrorist  
11 financing around the globe.

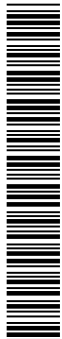
12 **SEC. 4112. EXPANDED REPORTING AND TESTIMONY RE-**  
13 **QUIREMENTS FOR THE SECRETARY OF THE**  
14 **TREASURY.**

15 (a) REPORTING REQUIREMENTS.—Section 1503(a)  
16 of the International Financial Institutions Act (22 U.S.C.  
17 262o-2(a)) is amended by adding at the end the following  
18 new paragraph:

19 “(15) Work with the International Monetary  
20 Fund to—

21 “(A) foster strong global anti-money laun-  
22 dering (AML) and combat the financing of ter-  
23 rorism (CFT) regimes;

24 “(B) ensure that country performance  
25 under the Financial Action Task Force anti-





1 money laundering and counter-terrorist financ-  
2 ing standards is effectively and comprehensively  
3 monitored;

4 “(C) ensure note is taken of AML and  
5 CFT issues in Article IV reports, International  
6 Monetary Fund programs, and other regular re-  
7 views of country progress;

8 “(D) ensure that effective AML and CFT  
9 regimes are considered to be indispensable ele-  
10 ments of sound financial systems; and

11 “(E) emphasize the importance of sound  
12 AML and CFT regimes to global growth and  
13 development.”.

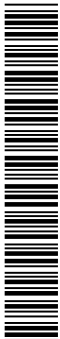
14 (b) TESTIMONY.—Section 1705(b) of such Act (22  
15 U.S.C. 262r-4(b)) is amended—

16 (1) by striking “and” at the end of paragraph  
17 (2);

18 (2) by striking the period at the end of para-  
19 graph (3) and inserting “; and” and

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

21 “(4) the status of implementation of inter-  
22 national anti-money laundering and counter-terrorist  
23 financing standards by the International Monetary  
24 Fund, the multilateral development banks, and other  
25 multilateral financial policymaking bodies.”.



1 **SEC. 4113. COORDINATION OF UNITED STATES GOVERN-**  
2 **MENT EFFORTS.**

3 The Secretary of the Treasury, or the designee of the  
4 Secretary as the lead United States Government official  
5 to the Financial Action Task Force (FATF), shall con-  
6 tinue to convene the interagency United States Govern-  
7 ment FATF working group. This group, which includes  
8 representatives from all relevant federal agencies, shall  
9 meet at least once a year to advise the Secretary on poli-  
10 cies to be pursued by the United States regarding the de-  
11 velopment of common international AML and CFT stand-  
12 ards, to assess the adequacy and implementation of such  
13 standards, and to recommend to the Secretary improved  
14 or new standards as necessary.

15 **SEC. 4114. DEFINITIONS.**

16 In this subtitle:

17 (1) INTERNATIONAL FINANCIAL INSTITU-  
18 TIONS.—The term “international financial institu-  
19 tions” has the meaning given in section 1701(c)(2)  
20 of the International Financial Institutions Act.

21 (2) FINANCIAL ACTION TASK FORCE.—The  
22 term “Financial Action Task Force” means the  
23 international policy-making and standard-setting  
24 body dedicated to combating money laundering and  
25 terrorist financing that was created by the Group of  
26 Seven in 1989.



1           **TITLE V—GOVERNMENT**  
2                   **RESTRUCTURING**

          【Subtitles A through F of title V of the  
Amendment in the Nature of a Substitute con-  
sist of subtitles A through F of title V of the  
bill H.R. 10, as introduced on September 24,  
2004】

3       **Subtitle G—Emergency Financial**  
4                   **Preparedness**

5       **CHAPTER 1—EMERGENCY PREPARED-**  
6                   **NESS FOR FISCAL AUTHORITIES**

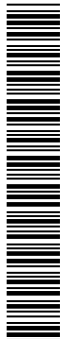
7       **SEC. 5081. DELEGATION AUTHORITY OF THE SECRETARY**  
8                   **OF THE TREASURY.**

9           Subsection (d) of section 306 of title 31, United  
10 States Code, is amended by inserting “or employee” after  
11 “another officer”.

12       **SEC. 5081A. TREASURY SUPPORT FOR FINANCIAL SERVICES**  
13                   **INDUSTRY PREPAREDNESS AND RESPONSE.**

14           (a) CONGRESSIONAL FINDING.—The Congress finds  
15 that the Secretary of the Treasury—

16                   (1) has successfully communicated and coordi-  
17 nated with the private-sector financial services in-  
18 dustry about counter-terrorist financing activities  
19 and preparedness;



1           (2) has successfully reached out to State and  
2 local governments and regional public-private part-  
3 nerships, such as ChicagoFIRST, that protect em-  
4 ployees and critical infrastructure by enhancing com-  
5 munication and coordinating plans for disaster pre-  
6 paredness and business continuity; and

7           (3) has set an example for the Department of  
8 Homeland Security and other Federal agency part-  
9 ners, whose active participation is vital to the overall  
10 success of the activities described in paragraphs (1)  
11 and (2).

12       (b) FURTHER EDUCATION AND PREPARATION EF-  
13 FORTS.—It is the sense of Congress that the Secretary  
14 of the Treasury, in consultation with the Secretary of  
15 Homeland Security and other Federal agency partners,  
16 should—

17           (1) furnish sufficient personnel and techno-  
18 logical and financial resources to foster the forma-  
19 tion of public-private sector coalitions, similar to  
20 ChicagoFIRST, that, in collaboration with the De-  
21 partment of Treasury, the Department of Homeland  
22 Security, and other Federal agency partners, would  
23 educate consumers and employees of the financial  
24 services industry about domestic counter-terrorist fi-  
25 nancing activities, including—



1 (A) how the public and private sector orga-  
2 nizations involved in counter-terrorist financing  
3 activities can help to combat terrorism and si-  
4 multaneously protect and preserve the lives and  
5 civil liberties of consumers and employees of the  
6 financial services industry; and

7 (B) how consumers and employees of the  
8 financial services industry can assist the public  
9 and private sector organizations involved in  
10 counter-terrorist financing activities; and

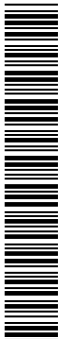
11 (2) submit annual reports to the Congress on  
12 Federal efforts, in conjunction with public-private  
13 sector coalitions, to educate consumers and employ-  
14 ees of the financial services industry about domestic  
15 counter-terrorist financing activities.

## 16 **CHAPTER 2—MARKET PREPAREDNESS**

### 17 **Subchapter A—Netting of Financial** 18 **Contracts**

#### 19 **SEC. 5082. SHORT TITLE.**

20 This subchapter may be cited as the “Financial Con-  
21 tracts Bankruptcy Reform Act of 2004”.



1 **SEC. 5082A. TREATMENT OF CERTAIN AGREEMENTS BY**  
 2 **CONSERVATORS OR RECEIVERS OF INSURED**  
 3 **DEPOSITORY INSTITUTIONS.**

4 (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
 5 TRACT.—

6 (1) FDIC-INSURED DEPOSITORY INSTITU-  
 7 TIONS.—Section 11(e)(8)(D) of the Federal Deposit  
 8 Insurance Act (12 U.S.C. 1821(e)(8)(D)) is  
 9 amended—

10 (A) by striking “subsection—” and insert-  
 11 ing “subsection, the following definitions shall  
 12 apply:”; and

13 (B) in clause (i), by inserting “, resolution,  
 14 or order” after “any similar agreement that the  
 15 Corporation determines by regulation”.

16 (2) INSURED CREDIT UNIONS.—Section  
 17 207(c)(8)(D) of the Federal Credit Union Act (12  
 18 U.S.C. 1787(c)(8)(D)) is amended—

19 (A) by striking “subsection—” and insert-  
 20 ing “subsection, the following definitions shall  
 21 apply:”; and

22 (B) in clause (i), by inserting “, resolution,  
 23 or order” after “any similar agreement that the  
 24 Board determines by regulation”.

25 (b) DEFINITION OF SECURITIES CONTRACT.—



1           (1) FDIC-INSURED DEPOSITORY INSTITU-  
2           TIONS.—Section 11(e)(8)(D)(ii) of the Federal De-  
3           posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is  
4           amended to read as follows:

5                   “(ii) SECURITIES CONTRACT.—The  
6                   term ‘securities contract’—

7                           “(I) means a contract for the  
8                           purchase, sale, or loan of a security, a  
9                           certificate of deposit, a mortgage loan,  
10                          or any interest in a mortgage loan, a  
11                          group or index of securities, certifi-  
12                          cates of deposit, or mortgage loans or  
13                          interests therein (including any inter-  
14                          est therein or based on the value  
15                          thereof) or any option on any of the  
16                          foregoing, including any option to  
17                          purchase or sell any such security,  
18                          certificate of deposit, mortgage loan,  
19                          interest, group or index, or option,  
20                          and including any repurchase or re-  
21                          verse repurchase transaction on any  
22                          such security, certificate of deposit,  
23                          mortgage loan, interest, group or  
24                          index, or option;



1                   “(II) does not include any pur-  
2                   chase, sale, or repurchase obligation  
3                   under a participation in a commercial  
4                   mortgage loan unless the Corporation  
5                   determines by regulation, resolution,  
6                   or order to include any such agree-  
7                   ment within the meaning of such  
8                   term;

9                   “(III) means any option entered  
10                  into on a national securities exchange  
11                  relating to foreign currencies;

12                  “(IV) means the guarantee by or  
13                  to any securities clearing agency of  
14                  any settlement of cash, securities, cer-  
15                  tificates of deposit, mortgage loans or  
16                  interests therein, group or index of se-  
17                  curities, certificates of deposit, or  
18                  mortgage loans or interests therein  
19                  (including any interest therein or  
20                  based on the value thereof) or option  
21                  on any of the foregoing, including any  
22                  option to purchase or sell any such se-  
23                  curity, certificate of deposit, mortgage  
24                  loan, interest, group or index, or op-  
25                  tion;





1 “(V) means any margin loan;

2 “(VI) means any other agree-  
3 ment or transaction that is similar to  
4 any agreement or transaction referred  
5 to in this clause;

6 “(VII) means any combination of  
7 the agreements or transactions re-  
8 ferred to in this clause;

9 “(VIII) means any option to  
10 enter into any agreement or trans-  
11 action referred to in this clause;

12 “(IX) means a master agreement  
13 that provides for an agreement or  
14 transaction referred to in subclause  
15 (I), (III), (IV), (V), (VI), (VII), or  
16 (VIII), together with all supplements  
17 to any such master agreement, with-  
18 out regard to whether the master  
19 agreement provides for an agreement  
20 or transaction that is not a securities  
21 contract under this clause, except that  
22 the master agreement shall be consid-  
23 ered to be a securities contract under  
24 this clause only with respect to each  
25 agreement or transaction under the



1 master agreement that is referred to  
 2 in subclause (I), (III), (IV), (V), (VI),  
 3 (VII), or (VIII); and

4 “(X) means any security agree-  
 5 ment or arrangement or other credit  
 6 enhancement related to any agree-  
 7 ment or transaction referred to in this  
 8 clause, including any guarantee or re-  
 9 imbursement obligation in connection  
 10 with any agreement or transaction re-  
 11 ferred to in this clause.”.

12 (2) INSURED CREDIT UNIONS.—Section  
 13 207(c)(8)(D)(ii) of the Federal Credit Union Act  
 14 (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as  
 15 follows:

16 “(ii) SECURITIES CONTRACT.—The  
 17 term ‘securities contract’—

18 “(I) means a contract for the  
 19 purchase, sale, or loan of a security, a  
 20 certificate of deposit, a mortgage loan,  
 21 or any interest in a mortgage loan, a  
 22 group or index of securities, certifi-  
 23 cates of deposit, or mortgage loans or  
 24 interests therein (including any inter-  
 25 est therein or based on the value

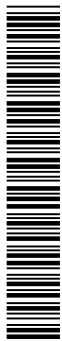


1                   thereof) or any option on any of the  
2                   foregoing, including any option to  
3                   purchase or sell any such security,  
4                   certificate of deposit, mortgage loan,  
5                   interest, group or index, or option,  
6                   and including any repurchase or re-  
7                   verse repurchase transaction on any  
8                   such security, certificate of deposit,  
9                   mortgage loan, interest, group or  
10                  index, or option;

11                   “(II) does not include any pur-  
12                   chase, sale, or repurchase obligation  
13                   under a participation in a commercial  
14                   mortgage loan unless the Board deter-  
15                   mines by regulation, resolution, or  
16                   order to include any such agreement  
17                   within the meaning of such term;

18                   “(III) means any option entered  
19                   into on a national securities exchange  
20                   relating to foreign currencies;

21                   “(IV) means the guarantee by or  
22                   to any securities clearing agency of  
23                   any settlement of cash, securities, cer-  
24                   tificates of deposit, mortgage loans or  
25                   interests therein, group or index of se-



1 curities, certificates of deposit, or  
2 mortgage loans or interests therein  
3 (including any interest therein or  
4 based on the value thereof) or option  
5 on any of the foregoing, including any  
6 option to purchase or sell any such se-  
7 curity, certificate of deposit, mortgage  
8 loan, interest, group or index, or op-  
9 tion;

10 “(V) means any margin loan;

11 “(VI) means any other agree-  
12 ment or transaction that is similar to  
13 any agreement or transaction referred  
14 to in this clause;

15 “(VII) means any combination of  
16 the agreements or transactions re-  
17 ferred to in this clause;

18 “(VIII) means any option to  
19 enter into any agreement or trans-  
20 action referred to in this clause;

21 “(IX) means a master agreement  
22 that provides for an agreement or  
23 transaction referred to in subclause  
24 (I), (III), (IV), (V), (VI), (VII), or  
25 (VIII), together with all supplements

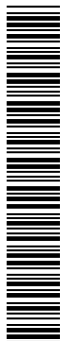


1 to any such master agreement, with-  
 2 out regard to whether the master  
 3 agreement provides for an agreement  
 4 or transaction that is not a securities  
 5 contract under this clause, except that  
 6 the master agreement shall be consid-  
 7 ered to be a securities contract under  
 8 this clause only with respect to each  
 9 agreement or transaction under the  
 10 master agreement that is referred to  
 11 in subclause (I), (III), (IV), (V), (VI),  
 12 (VII), or (VIII); and

13 “(X) means any security agree-  
 14 ment or arrangement or other credit  
 15 enhancement related to any agree-  
 16 ment or transaction referred to in this  
 17 clause, including any guarantee or re-  
 18 imbursement obligation in connection  
 19 with any agreement or transaction re-  
 20 ferred to in this clause.”.

21 (c) DEFINITION OF COMMODITY CONTRACT.—

22 (1) FDIC-INSURED DEPOSITORY INSTITU-  
 23 TIONS.—Section 11(e)(8)(D)(iii) of the Federal De-  
 24 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is  
 25 amended to read as follows:



1                   “(iii) COMMODITY CONTRACT.—The  
2 term ‘commodity contract’ means—

3                   “(I) with respect to a futures  
4 commission merchant, a contract for  
5 the purchase or sale of a commodity  
6 for future delivery on, or subject to  
7 the rules of, a contract market or  
8 board of trade;

9                   “(II) with respect to a foreign fu-  
10 tures commission merchant, a foreign  
11 future;

12                   “(III) with respect to a leverage  
13 transaction merchant, a leverage  
14 transaction;

15                   “(IV) with respect to a clearing  
16 organization, a contract for the pur-  
17 chase or sale of a commodity for fu-  
18 ture delivery on, or subject to the  
19 rules of, a contract market or board  
20 of trade that is cleared by such clear-  
21 ing organization, or commodity option  
22 traded on, or subject to the rules of,  
23 a contract market or board of trade  
24 that is cleared by such clearing orga-  
25 nization;



1                   “(V) with respect to a commodity  
2 options dealer, a commodity option;

3                   “(VI) any other agreement or  
4 transaction that is similar to any  
5 agreement or transaction referred to  
6 in this clause;

7                   “(VII) any combination of the  
8 agreements or transactions referred to  
9 in this clause;

10                  “(VIII) any option to enter into  
11 any agreement or transaction referred  
12 to in this clause;

13                  “(IX) a master agreement that  
14 provides for an agreement or trans-  
15 action referred to in subclause (I),  
16 (II), (III), (IV), (V), (VI), (VII), or  
17 (VIII), together with all supplements  
18 to any such master agreement, with-  
19 out regard to whether the master  
20 agreement provides for an agreement  
21 or transaction that is not a com-  
22 modity contract under this clause, ex-  
23 cept that the master agreement shall  
24 be considered to be a commodity con-  
25 tract under this clause only with re-



1           spect to each agreement or trans-  
 2           action under the master agreement  
 3           that is referred to in subclause (I),  
 4           (II), (III), (IV), (V), (VI), (VII), or  
 5           (VIII); or

6                       “(X) any security agreement or  
 7           arrangement or other credit enhance-  
 8           ment related to any agreement or  
 9           transaction referred to in this clause,  
 10          including any guarantee or reimburse-  
 11          ment obligation in connection with  
 12          any agreement or transaction referred  
 13          to in this clause.”.

14                   (2)   INSURED   CREDIT   UNIONS.—Section  
 15           207(c)(8)(D)(iii) of the Federal Credit Union Act  
 16           (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as  
 17           follows:

18                           “(iii)   COMMODITY   CONTRACT.—The  
 19           term ‘commodity contract’ means—

20                                       “(I) with respect to a futures  
 21           commission merchant, a contract for  
 22           the purchase or sale of a commodity  
 23           for future delivery on, or subject to  
 24           the rules of, a contract market or  
 25           board of trade;





1                   “(II) with respect to a foreign fu-  
2                   tures commission merchant, a foreign  
3                   future;

4                   “(III) with respect to a leverage  
5                   transaction merchant, a leverage  
6                   transaction;

7                   “(IV) with respect to a clearing  
8                   organization, a contract for the pur-  
9                   chase or sale of a commodity for fu-  
10                  ture delivery on, or subject to the  
11                  rules of, a contract market or board  
12                  of trade that is cleared by such clear-  
13                  ing organization, or commodity option  
14                  traded on, or subject to the rules of,  
15                  a contract market or board of trade  
16                  that is cleared by such clearing orga-  
17                  nization;

18                  “(V) with respect to a commodity  
19                  options dealer, a commodity option;

20                  “(VI) any other agreement or  
21                  transaction that is similar to any  
22                  agreement or transaction referred to  
23                  in this clause;



1                   “(VII) any combination of the  
2                   agreements or transactions referred to  
3                   in this clause;

4                   “(VIII) any option to enter into  
5                   any agreement or transaction referred  
6                   to in this clause;

7                   “(IX) a master agreement that  
8                   provides for an agreement or trans-  
9                   action referred to in subclause (I),  
10                  (II), (III), (IV), (V), (VI), (VII), or  
11                  (VIII), together with all supplements  
12                  to any such master agreement, with-  
13                  out regard to whether the master  
14                  agreement provides for an agreement  
15                  or transaction that is not a com-  
16                  modity contract under this clause, ex-  
17                  cept that the master agreement shall  
18                  be considered to be a commodity con-  
19                  tract under this clause only with re-  
20                  spect to each agreement or trans-  
21                  action under the master agreement  
22                  that is referred to in subclause (I),  
23                  (II), (III), (IV), (V), (VI), (VII), or  
24                  (VIII); or



1                   “(X) any security agreement or  
 2                   arrangement or other credit enhance-  
 3                   ment related to any agreement or  
 4                   transaction referred to in this clause,  
 5                   including any guarantee or reimburse-  
 6                   ment obligation in connection with  
 7                   any agreement or transaction referred  
 8                   to in this clause.”.

9           (d) DEFINITION OF FORWARD CONTRACT.—

10           (1) FDIC-INSURED DEPOSITORY INSTITU-  
 11           TIONS.—Section 11(e)(8)(D)(iv) of the Federal De-  
 12           posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is  
 13           amended to read as follows:

14                   “(iv) FORWARD CONTRACT.—The  
 15                   term ‘forward contract’ means—

16                           “(I) a contract (other than a  
 17                           commodity contract) for the purchase,  
 18                           sale, or transfer of a commodity or  
 19                           any similar good, article, service,  
 20                           right, or interest which is presently or  
 21                           in the future becomes the subject of  
 22                           dealing in the forward contract trade,  
 23                           or product or by-product thereof, with  
 24                           a maturity date more than 2 days  
 25                           after the date the contract is entered



1 into, including, a repurchase trans-  
2 action, reverse repurchase transaction,  
3 consignment, lease, swap, hedge  
4 transaction, deposit, loan, option, allo-  
5 cated transaction, unallocated trans-  
6 action, or any other similar agree-  
7 ment;

8 “(II) any combination of agree-  
9 ments or transactions referred to in  
10 subclauses (I) and (III);

11 “(III) any option to enter into  
12 any agreement or transaction referred  
13 to in subclause (I) or (II);

14 “(IV) a master agreement that  
15 provides for an agreement or trans-  
16 action referred to in subclauses (I),  
17 (II), or (III), together with all supple-  
18 ments to any such master agreement,  
19 without regard to whether the master  
20 agreement provides for an agreement  
21 or transaction that is not a forward  
22 contract under this clause, except that  
23 the master agreement shall be consid-  
24 ered to be a forward contract under  
25 this clause only with respect to each



1 agreement or transaction under the  
 2 master agreement that is referred to  
 3 in subclause (I), (II), or (III); or

4 “(V) any security agreement or  
 5 arrangement or other credit enhance-  
 6 ment related to any agreement or  
 7 transaction referred to in subclause  
 8 (I), (II), (III), or (IV), including any  
 9 guarantee or reimbursement obliga-  
 10 tion in connection with any agreement  
 11 or transaction referred to in any such  
 12 subclause.”.

13 (2) INSURED CREDIT UNIONS.—Section  
 14 207(c)(8)(D)(iv) of the Federal Credit Union Act  
 15 (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as  
 16 follows:

17 “(iv) FORWARD CONTRACT.—The  
 18 term ‘forward contract’ means—

19 “(I) a contract (other than a  
 20 commodity contract) for the purchase,  
 21 sale, or transfer of a commodity or  
 22 any similar good, article, service,  
 23 right, or interest which is presently or  
 24 in the future becomes the subject of  
 25 dealing in the forward contract trade,



1 or product or by-product thereof, with  
2 a maturity date more than 2 days  
3 after the date the contract is entered  
4 into, including, a repurchase trans-  
5 action, reverse repurchase transaction,  
6 consignment, lease, swap, hedge  
7 transaction, deposit, loan, option, allo-  
8 cated transaction, unallocated trans-  
9 action, or any other similar agree-  
10 ment;

11 “(II) any combination of agree-  
12 ments or transactions referred to in  
13 subclauses (I) and (III);

14 “(III) any option to enter into  
15 any agreement or transaction referred  
16 to in subclause (I) or (II);

17 “(IV) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclauses (I),  
20 (II), or (III), together with all supple-  
21 ments to any such master agreement,  
22 without regard to whether the master  
23 agreement provides for an agreement  
24 or transaction that is not a forward  
25 contract under this clause, except that



1 the master agreement shall be consid-  
 2 ered to be a forward contract under  
 3 this clause only with respect to each  
 4 agreement or transaction under the  
 5 master agreement that is referred to  
 6 in subclause (I), (II), or (III); or

7 “(V) any security agreement or  
 8 arrangement or other credit enhance-  
 9 ment related to any agreement or  
 10 transaction referred to in subclause  
 11 (I), (II), (III), or (IV), including any  
 12 guarantee or reimbursement obliga-  
 13 tion in connection with any agreement  
 14 or transaction referred to in any such  
 15 subclause.”.

16 (e) DEFINITION OF REPURCHASE AGREEMENT.—

17 (1) FDIC-INSURED DEPOSITORY INSTITU-  
 18 TIONS.—Section 11(e)(8)(D)(v) of the Federal De-  
 19 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is  
 20 amended to read as follows:

21 “(v) REPURCHASE AGREEMENT.—The  
 22 term ‘repurchase agreement’ (which defini-  
 23 tion also applies to a reverse repurchase  
 24 agreement)—



1                   “(I) means an agreement, includ-  
2                   ing related terms, which provides for  
3                   the transfer of one or more certifi-  
4                   cates of deposit, mortgage-related se-  
5                   curities (as such term is defined in  
6                   the Securities Exchange Act of 1934),  
7                   mortgage loans, interests in mortgage-  
8                   related securities or mortgage loans,  
9                   eligible bankers’ acceptances, qualified  
10                   foreign government securities or secu-  
11                   rities that are direct obligations of, or  
12                   that are fully guaranteed by, the  
13                   United States or any agency of the  
14                   United States against the transfer of  
15                   funds by the transferee of such certifi-  
16                   cates of deposit, eligible bankers’ ac-  
17                   ceptances, securities, mortgage loans,  
18                   or interests with a simultaneous  
19                   agreement by such transferee to  
20                   transfer to the transferor thereof cer-  
21                   tificates of deposit, eligible bankers’  
22                   acceptances, securities, mortgage  
23                   loans, or interests as described above,  
24                   at a date certain not later than 1 year  
25                   after such transfers or on demand,





1 against the transfer of funds, or any  
2 other similar agreement;

3 “(II) does not include any repur-  
4 chase obligation under a participation  
5 in a commercial mortgage loan unless  
6 the Corporation determines by regula-  
7 tion, resolution, or order to include  
8 any such participation within the  
9 meaning of such term;

10 “(III) means any combination of  
11 agreements or transactions referred to  
12 in subclauses (I) and (IV);

13 “(IV) means any option to enter  
14 into any agreement or transaction re-  
15 ferred to in subclause (I) or (III);

16 “(V) means a master agreement  
17 that provides for an agreement or  
18 transaction referred to in subclause  
19 (I), (III), or (IV), together with all  
20 supplements to any such master  
21 agreement, without regard to whether  
22 the master agreement provides for an  
23 agreement or transaction that is not a  
24 repurchase agreement under this  
25 clause, except that the master agree-



1                   ment shall be considered to be a re-  
2                   purchase agreement under this sub-  
3                   clause only with respect to each agree-  
4                   ment or transaction under the master  
5                   agreement that is referred to in sub-  
6                   clause (I), (III), or (IV); and

7                   “ (VI) means any security agree-  
8                   ment or arrangement or other credit  
9                   enhancement related to any agree-  
10                  ment or transaction referred to in  
11                  subclause (I), (III), (IV), or (V), in-  
12                  cluding any guarantee or reimburse-  
13                  ment obligation in connection with  
14                  any agreement or transaction referred  
15                  to in any such subclause.

16                  For purposes of this clause, the term  
17                  ‘qualified foreign government security’  
18                  means a security that is a direct obligation  
19                  of, or that is fully guaranteed by, the cen-  
20                  tral government of a member of the Orga-  
21                  nization for Economic Cooperation and  
22                  Development (as determined by regulation  
23                  or order adopted by the appropriate Fed-  
24                  eral banking authority).”.



1           (2)   INSURED   CREDIT   UNIONS.—Section  
2           207(c)(8)(D)(v) of the Federal Credit Union Act (12  
3           U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-  
4           lows:

5                       “(v) REPURCHASE AGREEMENT.—The  
6                       term ‘repurchase agreement’ (which defini-  
7                       tion also applies to a reverse repurchase  
8                       agreement)—

9                               “(I) means an agreement, includ-  
10                              ing related terms, which provides for  
11                              the transfer of one or more certifi-  
12                              cates of deposit, mortgage-related se-  
13                              curities (as such term is defined in  
14                              the Securities Exchange Act of 1934),  
15                              mortgage loans, interests in mortgage-  
16                              related securities or mortgage loans,  
17                              eligible bankers’ acceptances, qualified  
18                              foreign government securities or secu-  
19                              rities that are direct obligations of, or  
20                              that are fully guaranteed by, the  
21                              United States or any agency of the  
22                              United States against the transfer of  
23                              funds by the transferee of such certifi-  
24                              cates of deposit, eligible bankers’ ac-  
25                              ceptances, securities, mortgage loans,



1 or interests with a simultaneous  
2 agreement by such transferee to  
3 transfer to the transferor thereof cer-  
4 tificates of deposit, eligible bankers'  
5 acceptances, securities, mortgage  
6 loans, or interests as described above,  
7 at a date certain not later than 1 year  
8 after such transfers or on demand,  
9 against the transfer of funds, or any  
10 other similar agreement;

11 “(II) does not include any repur-  
12 chase obligation under a participation  
13 in a commercial mortgage loan unless  
14 the Board determines by regulation,  
15 resolution, or order to include any  
16 such participation within the meaning  
17 of such term;

18 “(III) means any combination of  
19 agreements or transactions referred to  
20 in subclauses (I) and (IV);

21 “(IV) means any option to enter  
22 into any agreement or transaction re-  
23ferred to in subclause (I) or (III);

24 “(V) means a master agreement  
25 that provides for an agreement or



1 transaction referred to in subclause  
2 (I), (III), or (IV), together with all  
3 supplements to any such master  
4 agreement, without regard to whether  
5 the master agreement provides for an  
6 agreement or transaction that is not a  
7 repurchase agreement under this  
8 clause, except that the master agree-  
9 ment shall be considered to be a re-  
10 purchase agreement under this sub-  
11 clause only with respect to each agree-  
12 ment or transaction under the master  
13 agreement that is referred to in sub-  
14 clause (I), (III), or (IV); and

15 “(VI) means any security agree-  
16 ment or arrangement or other credit  
17 enhancement related to any agree-  
18 ment or transaction referred to in  
19 subclause (I), (III), (IV), or (V), in-  
20 cluding any guarantee or reimburse-  
21 ment obligation in connection with  
22 any agreement or transaction referred  
23 to in any such subclause.

24 For purposes of this clause, the term  
25 ‘qualified foreign government security’



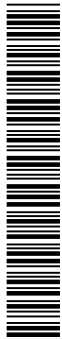
1 means a security that is a direct obligation  
2 of, or that is fully guaranteed by, the cen-  
3 tral government of a member of the Orga-  
4 nization for Economic Cooperation and  
5 Development (as determined by regulation  
6 or order adopted by the appropriate Fed-  
7 eral banking authority).”.

8 (f) DEFINITION OF SWAP AGREEMENT.—

9 (1) FDIC-INSURED DEPOSITORY INSTITU-  
10 TIONS.—Section 11(e)(8)(D)(vi) of the Federal De-  
11 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is  
12 amended to read as follows:

13 “(vi) SWAP AGREEMENT.—The term  
14 ‘swap agreement’ means—

15 “(I) any agreement, including the  
16 terms and conditions incorporated by  
17 reference in any such agreement,  
18 which is an interest rate swap, option,  
19 future, or forward agreement, includ-  
20 ing a rate floor, rate cap, rate collar,  
21 cross-currency rate swap, and basis  
22 swap; a spot, same day-tomorrow, to-  
23 morrow-next, forward, or other for-  
24 eign exchange or precious metals  
25 agreement; a currency swap, option,



1 future, or forward agreement; an equity  
2 index or equity swap, option, future,  
3 or forward agreement; a debt  
4 index or debt swap, option, future, or  
5 forward agreement; a total return,  
6 credit spread or credit swap, option,  
7 future, or forward agreement; a commodity  
8 index or commodity swap, option,  
9 future, or forward agreement; or  
10 a weather swap, weather derivative, or  
11 weather option;

12 “(II) any agreement or transaction  
13 that is similar to any other  
14 agreement or transaction referred to  
15 in this clause and that is of a type  
16 that has been, is presently, or in the  
17 future becomes, the subject of recurrent  
18 dealings in the swap markets (including  
19 terms and conditions incorporated by  
20 reference in such agreement) and that  
21 is a forward, swap, future, or option  
22 on one or more rates, currencies,  
23 commodities, equity securities or other  
24 equity instruments, debt securities or  
25 other debt instruments,



1 quantitative measures associated with  
2 an occurrence, extent of an occur-  
3 rence, or contingency associated with  
4 a financial, commercial, or economic  
5 consequence, or economic or financial  
6 indices or measures of economic or fi-  
7 nancial risk or value;

8 “(III) any combination of agree-  
9 ments or transactions referred to in  
10 this clause;

11 “(IV) any option to enter into  
12 any agreement or transaction referred  
13 to in this clause;

14 “(V) a master agreement that  
15 provides for an agreement or trans-  
16 action referred to in subclause (I),  
17 (II), (III), or (IV), together with all  
18 supplements to any such master  
19 agreement, without regard to whether  
20 the master agreement contains an  
21 agreement or transaction that is not a  
22 swap agreement under this clause, ex-  
23 cept that the master agreement shall  
24 be considered to be a swap agreement  
25 under this clause only with respect to





1 each agreement or transaction under  
2 the master agreement that is referred  
3 to in subclause (I), (II), (III), or (IV);  
4 and

5 “(VI) any security agreement or  
6 arrangement or other credit enhance-  
7 ment related to any agreements or  
8 transactions referred to in subclause  
9 (I), (II), (III), (IV), or (V), including  
10 any guarantee or reimbursement obli-  
11 gation in connection with any agree-  
12 ment or transaction referred to in any  
13 such subclause.

14 Such term is applicable for purposes of  
15 this subsection only and shall not be con-  
16 strued or applied so as to challenge or af-  
17 fect the characterization, definition, or  
18 treatment of any swap agreement under  
19 any other statute, regulation, or rule, in-  
20 cluding the Securities Act of 1933, the Se-  
21 curities Exchange Act of 1934, the Public  
22 Utility Holding Company Act of 1935, the  
23 Trust Indenture Act of 1939, the Invest-  
24 ment Company Act of 1940, the Invest-  
25 ment Advisers Act of 1940, the Securities



1 Investor Protection Act of 1970, the Com-  
2 modity Exchange Act, the Gramm-Leach-  
3 Bliley Act, and the Legal Certainty for  
4 Bank Products Act of 2000.”.

5 (2) INSURED CREDIT UNIONS.—Section  
6 207(c)(8)(D) of the Federal Credit Union Act (12  
7 U.S.C. 1787(c)(8)(D)) is amended by adding at the  
8 end the following new clause:

9 “(vi) SWAP AGREEMENT.—The term  
10 ‘swap agreement’ means—

11 “(I) any agreement, including the  
12 terms and conditions incorporated by  
13 reference in any such agreement,  
14 which is an interest rate swap, option,  
15 future, or forward agreement, includ-  
16 ing a rate floor, rate cap, rate collar,  
17 cross-currency rate swap, and basis  
18 swap; a spot, same day-tomorrow, to-  
19 morrow-next, forward, or other for-  
20 eign exchange or precious metals  
21 agreement; a currency swap, option,  
22 future, or forward agreement; an eq-  
23 uity index or equity swap, option, fu-  
24 ture, or forward agreement; a debt  
25 index or debt swap, option, future, or



1 forward agreement; a total return,  
2 credit spread or credit swap, option,  
3 future, or forward agreement; a com-  
4 modity index or commodity swap, op-  
5 tion, future, or forward agreement; or  
6 a weather swap, weather derivative, or  
7 weather option;

8 “(II) any agreement or trans-  
9 action that is similar to any other  
10 agreement or transaction referred to  
11 in this clause and that is of a type  
12 that has been, is presently, or in the  
13 future becomes, the subject of recur-  
14 rent dealings in the swap markets (in-  
15 cluding terms and conditions incor-  
16 porated by reference in such agree-  
17 ment) and that is a forward, swap, fu-  
18 ture, or option on one or more rates,  
19 currencies, commodities, equity securi-  
20 ties or other equity instruments, debt  
21 securities or other debt instruments,  
22 quantitative measures associated with  
23 an occurrence, extent of an occur-  
24 rence, or contingency associated with  
25 a financial, commercial, or economic

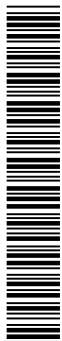


1 consequence, or economic or financial  
2 indices or measures of economic or fi-  
3 nancial risk or value;

4 “(III) any combination of agree-  
5 ments or transactions referred to in  
6 this clause;

7 “(IV) any option to enter into  
8 any agreement or transaction referred  
9 to in this clause;

10 “(V) a master agreement that  
11 provides for an agreement or trans-  
12 action referred to in subclause (I),  
13 (II), (III), or (IV), together with all  
14 supplements to any such master  
15 agreement, without regard to whether  
16 the master agreement contains an  
17 agreement or transaction that is not a  
18 swap agreement under this clause, ex-  
19 cept that the master agreement shall  
20 be considered to be a swap agreement  
21 under this clause only with respect to  
22 each agreement or transaction under  
23 the master agreement that is referred  
24 to in subclause (I), (II), (III), or (IV);  
25 and



1                   “(VI) any security agreement or  
2                   arrangement or other credit enhance-  
3                   ment related to any agreements or  
4                   transactions referred to in subclause  
5                   (I), (II), (III), (IV), or (V), including  
6                   any guarantee or reimbursement obli-  
7                   gation in connection with any agree-  
8                   ment or transaction referred to in any  
9                   such subclause.

10                   Such term is applicable for purposes of  
11                   this subsection only and shall not be con-  
12                   strued or applied so as to challenge or af-  
13                   fect the characterization, definition, or  
14                   treatment of any swap agreement under  
15                   any other statute, regulation, or rule, in-  
16                   cluding the Securities Act of 1933, the Se-  
17                   curities Exchange Act of 1934, the Public  
18                   Utility Holding Company Act of 1935, the  
19                   Trust Indenture Act of 1939, the Invest-  
20                   ment Company Act of 1940, the Invest-  
21                   ment Advisers Act of 1940, the Securities  
22                   Investor Protection Act of 1970, the Com-  
23                   modity Exchange Act, the Gramm-Leach-  
24                   Bliley Act, and the Legal Certainty for  
25                   Bank Products Act of 2000.”.



1 (g) DEFINITION OF TRANSFER.—

2 (1) FDIC-INSURED DEPOSITORY INSTITU-  
3 TIONS.—Section 11(e)(8)(D)(viii) of the Federal De-  
4 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii))  
5 is amended to read as follows:

6 “(viii) TRANSFER.—The term ‘trans-  
7 fer’ means every mode, direct or indirect,  
8 absolute or conditional, voluntary or invol-  
9 untary, of disposing of or parting with  
10 property or with an interest in property,  
11 including retention of title as a security in-  
12 terest and foreclosure of the depository in-  
13 stitution’s equity of redemption.”.

14 (2) INSURED CREDIT UNIONS.—Section  
15 207(c)(8)(D) of the Federal Credit Union Act (12  
16 U.S.C. 1787(c)(8)(D)) (as amended by subsection  
17 (f) of this section) is amended by adding at the end  
18 the following new clause:

19 “(viii) TRANSFER.—The term ‘trans-  
20 fer’ means every mode, direct or indirect,  
21 absolute or conditional, voluntary or invol-  
22 untary, of disposing of or parting with  
23 property or with an interest in property,  
24 including retention of title as a security in-



1                   terest and foreclosure of the depository in-  
2                   stitution's equity of redemption.”.

3           (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
4 TRACTS.—

5           (1) FDIC-INSURED DEPOSITORY INSTITU-  
6 TIONS.—Section 11(e)(8) of the Federal Deposit In-  
7 surance Act (12 U.S.C. 1821(e)(8)) is amended—

8                   (A) in subparagraph (A)—

9                           (i) by striking “paragraph (10)” and  
10                           inserting “paragraphs (9) and (10)”;

11                           (ii) in clause (i), by striking “to cause  
12                           the termination or liquidation” and insert-  
13                           ing “such person has to cause the termi-  
14                           nation, liquidation, or acceleration”; and

15                           (iii) by striking clause (ii) and insert-  
16                           ing the following new clause:

17                                   “(ii) any right under any security  
18                                   agreement or arrangement or other credit  
19                                   enhancement related to one or more quali-  
20                                   fied financial contracts described in clause  
21                                   (i);” and

22                           (B) in subparagraph (E), by striking  
23                           clause (ii) and inserting the following:

24                                   “(ii) any right under any security  
25                                   agreement or arrangement or other credit



1 enhancement related to one or more quali-  
2 fied financial contracts described in clause  
3 (i);”.

4 (2) INSURED CREDIT UNIONS.—Section  
5 207(c)(8) of the Federal Credit Union Act (12  
6 U.S.C. 1787(c)(8)) is amended—

7 (A) in subparagraph (A)—

8 (i) by striking “paragraph (12)” and  
9 inserting “paragraphs (9) and (10)”;

10 (ii) in clause (i), by striking “to cause  
11 the termination or liquidation” and insert-  
12 ing “such person has to cause the termi-  
13 nation, liquidation, or acceleration”; and

14 (iii) by striking clause (ii) and insert-  
15 ing the following new clause:

16 “(ii) any right under any security  
17 agreement or arrangement or other credit  
18 enhancement related to 1 or more qualified  
19 financial contracts described in clause  
20 (i);”; and

21 (B) in subparagraph (E), by striking  
22 clause (ii) and inserting the following new  
23 clause:

24 “(ii) any right under any security  
25 agreement or arrangement or other credit





1 enhancement related to 1 or more qualified  
2 financial contracts described in clause  
3 (i);”.

4 (i) AVOIDANCE OF TRANSFERS.—

5 (1) FDIC-INSURED DEPOSITORY INSTITU-  
6 TIONS.—Section 11(e)(8)(C)(i) of the Federal De-  
7 posit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is  
8 amended by inserting “section 5242 of the Revised  
9 Statutes of the United States or any other Federal  
10 or State law relating to the avoidance of preferential  
11 or fraudulent transfers,” before “the Corporation”.

12 (2) INSURED CREDIT UNIONS.—Section  
13 207(c)(8)(C)(i) of the Federal Credit Union Act (12  
14 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting  
15 “section 5242 of the Revised Statutes of the United  
16 States or any other Federal or State law relating to  
17 the avoidance of preferential or fraudulent trans-  
18 fers,” before “the Board”.

19 **SEC. 5082B. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**  
20 **SPECT TO FAILED AND FAILING INSTITU-**  
21 **TIONS.**

22 (a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

23 (1) IN GENERAL.—Section 11(e)(8) of the Fed-  
24 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8))  
25 is amended—



1 (A) in subparagraph (E), by striking  
 2 “other than paragraph (12) of this subsection,  
 3 subsection (d)(9)” and inserting “other than  
 4 subsections (d)(9) and (e)(10)”; and

5 (B) by adding at the end the following new  
 6 subparagraphs:

7 “(F) CLARIFICATION.—No provision of law  
 8 shall be construed as limiting the right or  
 9 power of the Corporation, or authorizing any  
 10 court or agency to limit or delay, in any man-  
 11 ner, the right or power of the Corporation to  
 12 transfer any qualified financial contract in ac-  
 13 cordance with paragraphs (9) and (10) of this  
 14 subsection or to disaffirm or repudiate any such  
 15 contract in accordance with subsection (e)(1) of  
 16 this section.

17 “(G) WALKAWAY CLAUSES NOT EFFEC-  
 18 TIVE.—

19 “(i) IN GENERAL.—Notwithstanding  
 20 the provisions of subparagraphs (A) and  
 21 (E), and sections 403 and 404 of the Fed-  
 22 eral Deposit Insurance Corporation Im-  
 23 provement Act of 1991, no walkaway  
 24 clause shall be enforceable in a qualified fi-



1 nancial contract of an insured depository  
2 institution in default.

3 “(ii) WALKAWAY CLAUSE DEFINED.—  
4 For purposes of this subparagraph, the  
5 term ‘walkaway clause’ means a provision  
6 in a qualified financial contract that, after  
7 calculation of a value of a party’s position  
8 or an amount due to or from 1 of the par-  
9 ties in accordance with its terms upon ter-  
10 mination, liquidation, or acceleration of the  
11 qualified financial contract, either does not  
12 create a payment obligation of a party or  
13 extinguishes a payment obligation of a  
14 party in whole or in part solely because of  
15 such party’s status as a nondefaulting  
16 party.”.

17 (2) TECHNICAL AND CONFORMING AMEND-  
18 MENT.—Section 11(e)(12)(A) of the Federal Deposit  
19 Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amend-  
20 ed by inserting “or the exercise of rights or powers  
21 by” after “the appointment of”.

22 (b) NATIONAL CREDIT UNION ADMINISTRATION  
23 BOARD.—



1           (1) IN GENERAL.—Section 207(c)(8) of the  
2 Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
3 amended—

4           (A) in subparagraph (E) (as amended by  
5 section 2(h)), by striking “other than para-  
6 graph (12) of this subsection, subsection  
7 (b)(9)” and inserting “other than subsections  
8 (b)(9) and (c)(10)”; and

9           (B) by adding at the end the following new  
10 subparagraphs:

11           “(F) CLARIFICATION.—No provision of law  
12 shall be construed as limiting the right or  
13 power of the Board, or authorizing any court or  
14 agency to limit or delay, in any manner, the  
15 right or power of the Board to transfer any  
16 qualified financial contract in accordance with  
17 paragraphs (9) and (10) of this subsection or to  
18 disaffirm or repudiate any such contract in ac-  
19 cordance with subsection (c)(1) of this section.

20           “(G) WALKAWAY CLAUSES NOT EFFEC-  
21 TIVE.—

22           “(i) IN GENERAL.—Notwithstanding  
23 the provisions of subparagraphs (A) and  
24 (E), and sections 403 and 404 of the Fed-  
25 eral Deposit Insurance Corporation Im-



1           provement Act of 1991, no walkaway  
2           clause shall be enforceable in a qualified fi-  
3           nancial contract of an insured credit union  
4           in default.

5                   “(ii) WALKAWAY CLAUSE DEFINED.—  
6           For purposes of this subparagraph, the  
7           term ‘walkaway clause’ means a provision  
8           in a qualified financial contract that, after  
9           calculation of a value of a party’s position  
10          or an amount due to or from 1 of the par-  
11          ties in accordance with its terms upon ter-  
12          mination, liquidation, or acceleration of the  
13          qualified financial contract, either does not  
14          create a payment obligation of a party or  
15          extinguishes a payment obligation of a  
16          party in whole or in part solely because of  
17          such party’s status as a nondefaulting  
18          party.”.

19                   (2) TECHNICAL AND CONFORMING AMEND-  
20          MENT.—Section 207(c)(12)(A) of the Federal Credit  
21          Union Act (12 U.S.C. 1787(c)(12)(A)) is amended  
22          by inserting “or the exercise of rights or powers by”  
23          after “the appointment of”.



1 **SEC. 5082C. AMENDMENTS RELATING TO TRANSFERS OF**  
2 **QUALIFIED FINANCIAL CONTRACTS.**

3 (a) **FDIC-INSURED DEPOSITORY INSTITUTIONS.—**

4 (1) **TRANSFERS OF QUALIFIED FINANCIAL CON-**  
5 **TRACTS TO FINANCIAL INSTITUTIONS.—**Section  
6 11(e)(9) of the Federal Deposit Insurance Act (12  
7 U.S.C. 1821(e)(9)) is amended to read as follows:

8 “(9) **TRANSFER OF QUALIFIED FINANCIAL CON-**  
9 **TRACTS.—**

10 “(A) **IN GENERAL.—**In making any trans-  
11 fer of assets or liabilities of a depository institu-  
12 tion in default which includes any qualified fi-  
13 nancial contract, the conservator or receiver for  
14 such depository institution shall either—

15 “(i) transfer to one financial institu-  
16 tion, other than a financial institution for  
17 which a conservator, receiver, trustee in  
18 bankruptcy, or other legal custodian has  
19 been appointed or which is otherwise the  
20 subject of a bankruptcy or insolvency  
21 proceeding—

22 “(I) all qualified financial con-  
23 tracts between any person or any af-  
24 filiate of such person and the deposi-  
25 tory institution in default;



1                   “(II) all claims of such person or  
 2                   any affiliate of such person against  
 3                   such depository institution under any  
 4                   such contract (other than any claim  
 5                   which, under the terms of any such  
 6                   contract, is subordinated to the claims  
 7                   of general unsecured creditors of such  
 8                   institution);

9                   “(III) all claims of such deposi-  
 10                   tory institution against such person or  
 11                   any affiliate of such person under any  
 12                   such contract; and

13                   “(IV) all property securing or  
 14                   any other credit enhancement for any  
 15                   contract described in subclause (I) or  
 16                   any claim described in subclause (II)  
 17                   or (III) under any such contract; or

18                   “(ii) transfer none of the qualified fi-  
 19                   nancial contracts, claims, property or other  
 20                   credit enhancement referred to in clause (i)  
 21                   (with respect to such person and any affil-  
 22                   iate of such person).

23                   “(B) TRANSFER TO FOREIGN BANK, FOR-  
 24                   EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
 25                   AGENCY OF A FOREIGN BANK OR FINANCIAL IN-



1           STITUTION.—In transferring any qualified fi-  
2           nancial contracts and related claims and prop-  
3           erty under subparagraph (A)(i), the conservator  
4           or receiver for the depository institution shall  
5           not make such transfer to a foreign bank, fi-  
6           nancial institution organized under the laws of  
7           a foreign country, or a branch or agency of a  
8           foreign bank or financial institution unless,  
9           under the law applicable to such bank, financial  
10          institution, branch or agency, to the qualified  
11          financial contracts, and to any netting contract,  
12          any security agreement or arrangement or other  
13          credit enhancement related to one or more  
14          qualified financial contracts, the contractual  
15          rights of the parties to such qualified financial  
16          contracts, netting contracts, security agree-  
17          ments or arrangements, or other credit en-  
18          hancements are enforceable substantially to the  
19          same extent as permitted under this section.

20                 “(C) TRANSFER OF CONTRACTS SUBJECT  
21                 TO THE RULES OF A CLEARING ORGANIZA-  
22                 TION.—In the event that a conservator or re-  
23                 ceiver transfers any qualified financial contract  
24                 and related claims, property, and credit en-  
25                 hancements pursuant to subparagraph (A)(i)





1 and such contract is cleared by or subject to the  
2 rules of a clearing organization, the clearing or-  
3 ganization shall not be required to accept the  
4 transferee as a member by virtue of the trans-  
5 fer.

6 “(D) DEFINITIONS.—For purposes of this  
7 paragraph, the term ‘financial institution’  
8 means a broker or dealer, a depository institu-  
9 tion, a futures commission merchant, or any  
10 other institution, as determined by the Corpora-  
11 tion by regulation to be a financial institution,  
12 and the term ‘clearing organization’ has the  
13 same meaning as in section 402 of the Federal  
14 Deposit Insurance Corporation Improvement  
15 Act of 1991.”

16 (2) NOTICE TO QUALIFIED FINANCIAL CON-  
17 TRACT COUNTERPARTIES.—Section 11(e)(10)(A) of  
18 the Federal Deposit Insurance Act (12 U.S.C.  
19 1821(e)(10)(A)) is amended in the material imme-  
20 diately following clause (ii) by striking “the conser-  
21 vator” and all that follows through the period and  
22 inserting the following: “the conservator or receiver  
23 shall notify any person who is a party to any such  
24 contract of such transfer by 5:00 p.m. (eastern time)  
25 on the business day following the date of the ap-



1 pointment of the receiver in the case of a receiver-  
2 ship, or the business day following such transfer in  
3 the case of a conservatorship.”.

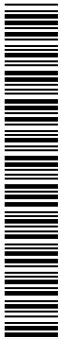
4 (3) RIGHTS AGAINST RECEIVER AND CONSER-  
5 VATOR AND TREATMENT OF BRIDGE BANKS.—Sec-  
6 tion 11(e)(10) of the Federal Deposit Insurance Act  
7 (12 U.S.C. 1821(e)(10)) is amended—

8 (A) by redesignating subparagraph (B) as  
9 subparagraph (D); and

10 (B) by inserting after subparagraph (A)  
11 the following new subparagraphs:

12 “(B) CERTAIN RIGHTS NOT ENFORCE-  
13 ABLE.—

14 “(i) RECEIVERSHIP.—A person who is  
15 a party to a qualified financial contract  
16 with an insured depository institution may  
17 not exercise any right that such person has  
18 to terminate, liquidate, or net such con-  
19 tract under paragraph (8)(A) of this sub-  
20 section or section 403 or 404 of the Fed-  
21 eral Deposit Insurance Corporation Im-  
22 provement Act of 1991, solely by reason of  
23 or incidental to the appointment of a re-  
24 ceiver for the depository institution (or the  
25 insolvency or financial condition of the de-



1           pository institution for which the receiver  
2           has been appointed)—

3                   “(I) until 5:00 p.m. (eastern  
4                   time) on the business day following  
5                   the date of the appointment of the re-  
6                   ceiver; or

7                   “(II) after the person has re-  
8                   ceived notice that the contract has  
9                   been transferred pursuant to para-  
10                  graph (9)(A).

11                  “(ii) CONSERVATORSHIP.—A person  
12                  who is a party to a qualified financial con-  
13                  tract with an insured depository institution  
14                  may not exercise any right that such per-  
15                  son has to terminate, liquidate, or net such  
16                  contract under paragraph (8)(E) of this  
17                  subsection or section 403 or 404 of the  
18                  Federal Deposit Insurance Corporation  
19                  Improvement Act of 1991, solely by reason  
20                  of or incidental to the appointment of a  
21                  conservator for the depository institution  
22                  (or the insolvency or financial condition of  
23                  the depository institution for which the  
24                  conservator has been appointed).



1                   “(iii) NOTICE.—For purposes of this  
2                   paragraph, the Corporation as receiver or  
3                   conservator of an insured depository insti-  
4                   tution shall be deemed to have notified a  
5                   person who is a party to a qualified finan-  
6                   cial contract with such depository institu-  
7                   tion if the Corporation has taken steps  
8                   reasonably calculated to provide notice to  
9                   such person by the time specified in sub-  
10                   paragraph (A).

11                   “(C) TREATMENT OF BRIDGE BANKS.—  
12                   The following institutions shall not be consid-  
13                   ered to be a financial institution for which a  
14                   conservator, receiver, trustee in bankruptcy, or  
15                   other legal custodian has been appointed or  
16                   which is otherwise the subject of a bankruptcy  
17                   or insolvency proceeding for purposes of para-  
18                   graph (9):

19                   “(i) A bridge bank.

20                   “(ii) A depository institution orga-  
21                   nized by the Corporation, for which a con-  
22                   servator is appointed either—

23                   “(I) immediately upon the orga-  
24                   nization of the institution; or



1                   “(II) at the time of a purchase  
 2                   and assumption transaction between  
 3                   the depository institution and the Cor-  
 4                   poration as receiver for a depository  
 5                   institution in default.”.

6           (b) INSURED CREDIT UNIONS.—

7                   (1) TRANSFERS OF QUALIFIED FINANCIAL CON-  
 8                   TRACTS TO FINANCIAL INSTITUTIONS.—Section  
 9                   207(c)(9) of the Federal Credit Union Act (12  
 10                   U.S.C. 1787(c)(9)) is amended to read as follows:

11                   “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
 12                   TRACTS.—

13                   “(A) IN GENERAL.—In making any trans-  
 14                   fer of assets or liabilities of a credit union in  
 15                   default which includes any qualified financial  
 16                   contract, the conservator or liquidating agent  
 17                   for such credit union shall either—

18                   “(i) transfer to 1 financial institution,  
 19                   other than a financial institution for which  
 20                   a conservator, receiver, trustee in bank-  
 21                   ruptcy, or other legal custodian has been  
 22                   appointed or which is otherwise the subject  
 23                   of a bankruptcy or insolvency proceeding—

24                   “(I) all qualified financial con-  
 25                   tracts between any person or any af-



1           filiate of such person and the credit  
2           union in default;

3                   “(II) all claims of such person or  
4           any affiliate of such person against  
5           such credit union under any such con-  
6           tract (other than any claim which,  
7           under the terms of any such contract,  
8           is subordinated to the claims of gen-  
9           eral unsecured creditors of such credit  
10          union);

11                   “(III) all claims of such credit  
12          union against such person or any af-  
13          filiate of such person under any such  
14          contract; and

15                   “(IV) all property securing or  
16          any other credit enhancement for any  
17          contract described in subclause (I) or  
18          any claim described in subclause (II)  
19          or (III) under any such contract; or

20                   “(ii) transfer none of the qualified fi-  
21          nancial contracts, claims, property or other  
22          credit enhancement referred to in clause (i)  
23          (with respect to such person and any affil-  
24          iate of such person).



1           “(B) TRANSFER TO FOREIGN BANK, FOR-  
2           EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
3           AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
4           STITUTION.—In transferring any qualified fi-  
5           nancial contracts and related claims and prop-  
6           erty under subparagraph (A)(i), the conservator  
7           or liquidating agent for the credit union shall  
8           not make such transfer to a foreign bank, fi-  
9           nancial institution organized under the laws of  
10          a foreign country, or a branch or agency of a  
11          foreign bank or financial institution unless,  
12          under the law applicable to such bank, financial  
13          institution, branch or agency, to the qualified  
14          financial contracts, and to any netting contract,  
15          any security agreement or arrangement or other  
16          credit enhancement related to 1 or more quali-  
17          fied financial contracts, the contractual rights  
18          of the parties to such qualified financial con-  
19          tracts, netting contracts, security agreements or  
20          arrangements, or other credit enhancements are  
21          enforceable substantially to the same extent as  
22          permitted under this section.

23           “(C) TRANSFER OF CONTRACTS SUBJECT  
24           TO THE RULES OF A CLEARING ORGANIZA-  
25           TION.—In the event that a conservator or liqui-



1 dating agent transfers any qualified financial  
2 contract and related claims, property, and cred-  
3 it enhancements pursuant to subparagraph  
4 (A)(i) and such contract is cleared by or subject  
5 to the rules of a clearing organization, the  
6 clearing organization shall not be required to  
7 accept the transferee as a member by virtue of  
8 the transfer.

9 “(D) DEFINITIONS.—For purposes of this  
10 paragraph—

11 “(i) the term ‘financial institution’  
12 means a broker or dealer, a depository in-  
13 stitution, a futures commission merchant,  
14 a credit union, or any other institution, as  
15 determined by the Board by regulation to  
16 be a financial institution; and

17 “(ii) the term ‘clearing organization’  
18 has the same meaning as in section 402 of  
19 the Federal Deposit Insurance Corporation  
20 Improvement Act of 1991.”.

21 (2) NOTICE TO QUALIFIED FINANCIAL CON-  
22 TRACT COUNTERPARTIES.—Section 207(c)(10)(A) of  
23 the Federal Credit Union Act (12 U.S.C.  
24 1787(c)(10)(A)) is amended in the material imme-  
25 diately following clause (ii) by striking “the conser-





1 vator” and all that follows through the period and  
2 inserting the following: “the conservator or liqui-  
3 dating agent shall notify any person who is a party  
4 to any such contract of such transfer by 5:00 p.m.  
5 (eastern time) on the business day following the date  
6 of the appointment of the liquidating agent in the  
7 case of a liquidation, or the business day following  
8 such transfer in the case of a conservatorship.”.

9 (3) RIGHTS AGAINST LIQUIDATING AGENT AND  
10 CONSERVATOR AND TREATMENT OF BRIDGE  
11 BANKS.—Section 207(c)(10) of the Federal Credit  
12 Union Act (12 U.S.C. 1787(c)(10)) is amended—

13 (A) by redesignating subparagraph (B) as  
14 subparagraph (D); and

15 (B) by inserting after subparagraph (A)  
16 the following new subparagraphs:

17 “(B) CERTAIN RIGHTS NOT ENFORCE-  
18 ABLE.—

19 “(i) LIQUIDATION.—A person who is  
20 a party to a qualified financial contract  
21 with an insured credit union may not exer-  
22 cise any right that such person has to ter-  
23 minate, liquidate, or net such contract  
24 under paragraph (8)(A) of this subsection  
25 or section 403 or 404 of the Federal De-



1           posit Insurance Corporation Improvement  
2           Act of 1991, solely by reason of or inci-  
3           dental to the appointment of a liquidating  
4           agent for the credit union institution (or  
5           the insolvency or financial condition of the  
6           credit union for which the liquidating  
7           agent has been appointed)—

8                   “(I) until 5:00 p.m. (eastern  
9                   time) on the business day following  
10                  the date of the appointment of the liq-  
11                  uidating agent; or

12                  “(II) after the person has re-  
13                  ceived notice that the contract has  
14                  been transferred pursuant to para-  
15                  graph (9)(A).

16                  “(ii) CONSERVATORSHIP.—A person  
17                  who is a party to a qualified financial con-  
18                  tract with an insured credit union may not  
19                  exercise any right that such person has to  
20                  terminate, liquidate, or net such contract  
21                  under paragraph (8)(E) of this subsection  
22                  or section 403 or 404 of the Federal De-  
23                  posit Insurance Corporation Improvement  
24                  Act of 1991, solely by reason of or inci-  
25                  dental to the appointment of a conservator



1 for the credit union or the insolvency or fi-  
 2 nancial condition of the credit union for  
 3 which the conservator has been appointed).

4 “(iii) NOTICE.—For purposes of this  
 5 paragraph, the Board as conservator or  
 6 liquidating agent of an insured credit  
 7 union shall be deemed to have notified a  
 8 person who is a party to a qualified finan-  
 9 cial contract with such credit union if the  
 10 Board has taken steps reasonably cal-  
 11 culated to provide notice to such person by  
 12 the time specified in subparagraph (A).

13 “(C) TREATMENT OF BRIDGE BANKS.—  
 14 The following institutions shall not be consid-  
 15 ered to be a financial institution for which a  
 16 conservator, receiver, trustee in bankruptcy, or  
 17 other legal custodian has been appointed or  
 18 which is otherwise the subject of a bankruptcy  
 19 or insolvency proceeding for purposes of para-  
 20 graph (9):

21 “(i) A bridge bank.

22 “(ii) A credit union organized by the  
 23 Board, for which a conservator is ap-  
 24 pointed either—



1 “(I) immediately upon the orga-  
2 nization of the credit union; or

3 “(II) at the time of a purchase  
4 and assumption transaction between  
5 the credit union and the Board as re-  
6 ceiver for a credit union in default.”.

7 **SEC. 5082D. AMENDMENTS RELATING TO DISAFFIRMANCE**  
8 **OR REPUDIATION OF QUALIFIED FINANCIAL**  
9 **CONTRACTS.**

10 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—  
11 Section 11(e) of the Federal Deposit Insurance Act (12  
12 U.S.C. 1821(e)) is amended—

13 (1) by redesignating paragraphs (11) through  
14 (15) as paragraphs (12) through (16), respectively;

15 (2) by inserting after paragraph (10) the fol-  
16 lowing new paragraph:

17 “(11) DISAFFIRMANCE OR REPUDIATION OF  
18 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
19 the rights of disaffirmance or repudiation of a con-  
20 servator or receiver with respect to any qualified fi-  
21 nancial contract to which an insured depository in-  
22 stitution is a party, the conservator or receiver for  
23 such institution shall either—

24 “(A) disaffirm or repudiate all qualified fi-  
25 nancial contracts between—



1                   “(i) any person or any affiliate of  
2                   such person; and

3                   “(ii) the depository institution in de-  
4                   fault; or

5                   “(B) disaffirm or repudiate none of the  
6                   qualified financial contracts referred to in sub-  
7                   paragraph (A) (with respect to such person or  
8                   any affiliate of such person).”; and

9                   (3) by adding at the end the following new  
10                  paragraph:

11                  “(17) SAVINGS CLAUSE.—The meanings of  
12                  terms used in this subsection are applicable for pur-  
13                  poses of this subsection only, and shall not be con-  
14                  strued or applied so as to challenge or affect the  
15                  characterization, definition, or treatment of any  
16                  similar terms under any other statute, regulation, or  
17                  rule, including the Gramm-Leach-Bliley Act, the  
18                  Legal Certainty for Bank Products Act of 2000, the  
19                  securities laws (as that term is defined in section  
20                  3(a)(47) of the Securities Exchange Act of 1934),  
21                  and the Commodity Exchange Act.”.

22                  (b) INSURED CREDIT UNIONS.—Section 207(c) of  
23                  the Federal Credit Union Act (12 U.S.C. 1787(c)) is  
24                  amended—



1 (1) by redesignating paragraphs (11), (12), and  
2 (13) as paragraphs (12), (13), and (14), respec-  
3 tively;

4 (2) by inserting after paragraph (10) the fol-  
5 lowing new paragraph:

6 “(11) DISAFFIRMANCE OR REPUDIATION OF  
7 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
8 the rights of disaffirmance or repudiation of a con-  
9 servator or liquidating agent with respect to any  
10 qualified financial contract to which an insured cred-  
11 it union is a party, the conservator or liquidating  
12 agent for such credit union shall either—

13 “(A) disaffirm or repudiate all qualified fi-  
14 nancial contracts between—

15 “(i) any person or any affiliate of  
16 such person; and

17 “(ii) the credit union in default; or

18 “(B) disaffirm or repudiate none of the  
19 qualified financial contracts referred to in sub-  
20 paragraph (A) (with respect to such person or  
21 any affiliate of such person).”; and

22 (3) by adding at the end the following new  
23 paragraph:

24 “(15) SAVINGS CLAUSE.—The meanings of  
25 terms used in this subsection are applicable for pur-



1 poses of this subsection only, and shall not be con-  
2 strued or applied so as to challenge or affect the  
3 characterization, definition, or treatment of any  
4 similar terms under any other statute, regulation, or  
5 rule, including the Gramm-Leach-Bliley Act, the  
6 Legal Certainty for Bank Products Act of 2000, the  
7 securities laws (as that term is defined in section  
8 (a)(47) of the Securities Exchange Act of 1934),  
9 and the Commodity Exchange Act.”.

10 **SEC. 5082E. CLARIFYING AMENDMENT RELATING TO MAS-**  
11 **TER AGREEMENTS.**

12 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—  
13 Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance  
14 Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as  
15 follows:

16 “(vii) TREATMENT OF MASTER  
17 AGREEMENT AS ONE AGREEMENT.—Any  
18 master agreement for any contract or  
19 agreement described in any preceding  
20 clause of this subparagraph (or any master  
21 agreement for such master agreement or  
22 agreements), together with all supplements  
23 to such master agreement, shall be treated  
24 as a single agreement and a single quali-  
25 fied financial contract. If a master agree-



1           ment contains provisions relating to agree-  
2           ments or transactions that are not them-  
3           selves qualified financial contracts, the  
4           master agreement shall be deemed to be a  
5           qualified financial contract only with re-  
6           spect to those transactions that are them-  
7           selves qualified financial contracts.”.

8           (b)     INSURED     CREDIT     UNIONS.—Section  
9     207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C.  
10    1787(c)(8)(D)) is amended by inserting after clause (vi)  
11    (as added by section 5082A(f) of this subchapter) the fol-  
12    lowing new clause:

13                   “(vii)   TREATMENT   OF   MASTER  
14                   AGREEMENT AS ONE AGREEMENT.—Any  
15                   master agreement for any contract or  
16                   agreement described in any preceding  
17                   clause of this subparagraph (or any master  
18                   agreement for such master agreement or  
19                   agreements), together with all supplements  
20                   to such master agreement, shall be treated  
21                   as a single agreement and a single quali-  
22                   fied financial contract. If a master agree-  
23                   ment contains provisions relating to agree-  
24                   ments or transactions that are not them-  
25                   selves qualified financial contracts, the





1 master agreement shall be deemed to be a  
2 qualified financial contract only with re-  
3 spect to those transactions that are them-  
4 selves qualified financial contracts.”.

5 **SEC. 5082F. FEDERAL DEPOSIT INSURANCE CORPORATION**  
6 **IMPROVEMENT ACT OF 1991.**

7 (a) DEFINITIONS.—Section 402 of the Federal De-  
8 posit Insurance Corporation Improvement Act of 1991 (12  
9 U.S.C. 4402) is amended—

10 (1) in paragraph (2)—

11 (A) in subparagraph (A)(ii), by inserting  
12 before the semicolon “, or is exempt from such  
13 registration by order of the Securities and Ex-  
14 change Commission”; and

15 (B) in subparagraph (B), by inserting be-  
16 fore the period “, that has been granted an ex-  
17emption under section 4(c)(1) of the Com-  
18modity Exchange Act, or that is a multilateral  
19clearing organization (as defined in section 408  
20of this Act)”;

21 (2) in paragraph (6)—

22 (A) by redesignating subparagraphs (B)  
23 through (D) as subparagraphs (C) through (E),  
24 respectively;



1 (B) by inserting after subparagraph (A)  
2 the following new subparagraph:

3 “(B) an uninsured national bank or an un-  
4 insured State bank that is a member of the  
5 Federal Reserve System, if the national bank or  
6 State member bank is not eligible to make ap-  
7 plication to become an insured bank under sec-  
8 tion 5 of the Federal Deposit Insurance Act;”;  
9 and

10 (C) by amending subparagraph (C) (as re-  
11 designated) to read as follows:

12 “(C) a branch or agency of a foreign bank,  
13 a foreign bank and any branch or agency of the  
14 foreign bank, or the foreign bank that estab-  
15 lished the branch or agency, as those terms are  
16 defined in section 1(b) of the International  
17 Banking Act of 1978;”;

18 (3) in paragraph (11), by inserting before the  
19 period “and any other clearing organization with  
20 which such clearing organization has a netting con-  
21 tract”;

22 (4) by amending paragraph (14)(A)(i) to read  
23 as follows:

24 “(i) means a contract or agreement  
25 between 2 or more financial institutions,



1 clearing organizations, or members that  
2 provides for netting present or future pay-  
3 ment obligations or payment entitlements  
4 (including liquidation or close out values  
5 relating to such obligations or entitle-  
6 ments) among the parties to the agree-  
7 ment; and”;

8 (5) by adding at the end the following new  
9 paragraph:

10 “(15) PAYMENT.—The term ‘payment’ means a  
11 payment of United States dollars, another currency,  
12 or a composite currency, and a noncash delivery, in-  
13 cluding a payment or delivery to liquidate an  
14 unmatured obligation.”.

15 (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
16 TRACTS.—Section 403 of the Federal Deposit Insurance  
17 Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
18 is amended—

19 (1) by striking subsection (a) and inserting the  
20 following:

21 “(a) GENERAL RULE.—Notwithstanding any other  
22 provision of State or Federal law (other than paragraphs  
23 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
24 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and  
25 (10)(B) of section 207(e) of the Federal Credit Union Act,



1 or any order authorized under section 5(b)(2) of the Secu-  
2 rities Investor Protection Act of 1970), the covered con-  
3 tractual payment obligations and the covered contractual  
4 payment entitlements between any 2 financial institutions  
5 shall be netted in accordance with, and subject to the con-  
6 ditions of, the terms of any applicable netting contract (ex-  
7 cept as provided in section 561(b)(2) of title 11, United  
8 States Code).”; and

9 (2) by adding at the end the following new sub-  
10 section:

11 “(f) ENFORCEABILITY OF SECURITY AGREE-  
12 MENTS.—The provisions of any security agreement or ar-  
13 rangement or other credit enhancement related to one or  
14 more netting contracts between any 2 financial institu-  
15 tions shall be enforceable in accordance with their terms  
16 (except as provided in section 561(b)(2) of title 11, United  
17 States Code), and shall not be stayed, avoided, or other-  
18 wise limited by any State or Federal law (other than para-  
19 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
20 Federal Deposit Insurance Act, paragraphs (8)(E),  
21 (8)(F), and (10)(B) of section 207(c) of the Federal Cred-  
22 it Union Act, and section 5(b)(2) of the Securities Investor  
23 Protection Act of 1970).”.

24 (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
25 NETTING CONTRACTS.—Section 404 of the Federal De-



1 posit Insurance Corporation Improvement Act of 1991 (12  
2 U.S.C. 4404) is amended—

3 (1) by striking subsection (a) and inserting the  
4 following:

5 “(a) GENERAL RULE.—Notwithstanding any other  
6 provision of State or Federal law (other than paragraphs  
7 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
8 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and  
9 (10)(B) of section 207(c) of the Federal Credit Union Act,  
10 and any order authorized under section 5(b)(2) of the Se-  
11 curities Investor Protection Act of 1970), the covered con-  
12 tractual payment obligations and the covered contractual  
13 payment entitlements of a member of a clearing organiza-  
14 tion to and from all other members of a clearing organiza-  
15 tion shall be netted in accordance with and subject to the  
16 conditions of any applicable netting contract (except as  
17 provided in section 561(b)(2) of title 11, United States  
18 Code).”; and

19 (2) by adding at the end the following new sub-  
20 section:

21 “(h) ENFORCEABILITY OF SECURITY AGREE-  
22 MENTS.—The provisions of any security agreement or ar-  
23 rangement or other credit enhancement related to one or  
24 more netting contracts between any 2 members of a clear-  
25 ing organization shall be enforceable in accordance with



1 their terms (except as provided in section 561(b)(2) of  
2 title 11, United States Code), and shall not be stayed,  
3 avoided, or otherwise limited by any State or Federal law  
4 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
5 tion 11(e) of the Federal Deposit Insurance Act, para-  
6 graphs (8)(E), (8)(F), and (10)(B) of section 207(c) of  
7 the Federal Credit Union Act, and section 5(b)(2) of the  
8 Securities Investor Protection Act of 1970).”.

9 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
10 SURED NATIONAL BANKS, UNINSURED FEDERAL  
11 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE  
12 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The  
13 Federal Deposit Insurance Corporation Improvement Act  
14 of 1991 (12 U.S.C. 4401 et seq.) is amended—

15 (1) by redesignating section 407 as section  
16 407A; and

17 (2) by inserting after section 406 the following  
18 new section:

19 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
20 **NATIONAL BANKS, UNINSURED FEDERAL**  
21 **BRANCHES AND AGENCIES, CERTAIN UNIN-**  
22 **SURED STATE MEMBER BANKS, AND EDGE**  
23 **ACT CORPORATIONS.**

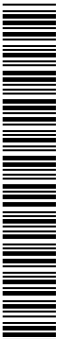
24 **“(a) IN GENERAL.—**Notwithstanding any other pro-  
25 vision of law, paragraphs (8), (9), (10), and (11) of section



1 11(e) of the Federal Deposit Insurance Act shall apply  
2 to an uninsured national bank or uninsured Federal  
3 branch or Federal agency, a corporation chartered under  
4 section 25A of the Federal Reserve Act, or an uninsured  
5 State member bank which operates, or operates as, a mul-  
6 tilateral clearing organization pursuant to section 409 of  
7 this Act, except that for such purpose—

8           “(1) any reference to the ‘Corporation as re-  
9 ceiver’ or ‘the receiver or the Corporation’ shall refer  
10 to the receiver appointed by the Comptroller of the  
11 Currency in the case of an uninsured national bank  
12 or uninsured Federal branch or agency, or to the re-  
13 ceiver appointed by the Board of Governors of the  
14 Federal Reserve System in the case of a corporation  
15 chartered under section 25A of the Federal Reserve  
16 Act or an uninsured State member bank;

17           “(2) any reference to the ‘Corporation’ (other  
18 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
19 poration, whether acting as such or as conservator  
20 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
21 to the receiver or conservator appointed by the  
22 Comptroller of the Currency in the case of an unin-  
23 sured national bank or uninsured Federal branch or  
24 agency, or to the receiver or conservator appointed  
25 by the Board of Governors of the Federal Reserve



1 System in the case of a corporation chartered under  
2 section 25A of the Federal Reserve Act or an unin-  
3 sured State member bank; and

4 “(3) any reference to an ‘insured depository in-  
5 stitution’ or ‘depository institution’ shall refer to an  
6 uninsured national bank, an uninsured Federal  
7 branch or Federal agency, a corporation chartered  
8 under section 25A of the Federal Reserve Act, or an  
9 uninsured State member bank which operates, or op-  
10 erates as, a multilateral clearing organization pursu-  
11 ant to section 409 of this Act.

12 “(b) LIABILITY.—The liability of a receiver or conser-  
13 vator of an uninsured national bank, uninsured Federal  
14 branch or agency, a corporation chartered under section  
15 25A of the Federal Reserve Act, or an uninsured State  
16 member bank which operates, or operates as, a multilat-  
17 eral clearing organization pursuant to section 409 of this  
18 Act, shall be determined in the same manner and subject  
19 to the same limitations that apply to receivers and con-  
20 servators of insured depository institutions under section  
21 11(e) of the Federal Deposit Insurance Act.

22 “(c) REGULATORY AUTHORITY.—

23 “(1) IN GENERAL.—The Comptroller of the  
24 Currency in the case of an uninsured national bank  
25 or uninsured Federal branch or agency and the





1 Board of Governors of the Federal Reserve System  
2 in the case of a corporation chartered under section  
3 25A of the Federal Reserve Act, or an uninsured  
4 State member bank that operates, or operates as, a  
5 multilateral clearing organization pursuant to sec-  
6 tion 409 of this Act, in consultation with the Fed-  
7 eral Deposit Insurance Corporation, may each pro-  
8 mulgate regulations solely to implement this section.

9 “(2) SPECIFIC REQUIREMENT.—In promul-  
10 gating regulations, limited solely to implementing  
11 paragraphs (8), (9), (10), and (11) of section 11(e)  
12 of the Federal Deposit Insurance Act, the Comp-  
13 troller of the Currency and the Board of Governors  
14 of the Federal Reserve System each shall ensure  
15 that the regulations generally are consistent with the  
16 regulations and policies of the Federal Deposit In-  
17 surance Corporation adopted pursuant to the Fed-  
18 eral Deposit Insurance Act.

19 “(d) DEFINITIONS.—For purposes of this section, the  
20 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign  
21 bank’ have the same meanings as in section 1(b) of the  
22 International Banking Act of 1978.”.

23 **SEC. 5082G. BANKRUPTCY CODE AMENDMENTS.**

24 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
25 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,



1 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is  
2 amended—  
3

4 (1) in section 101—

5 (A) in paragraph (25)—

6 (i) by striking “means a contract”  
7 and inserting “means—  
8 “(A) a contract”;

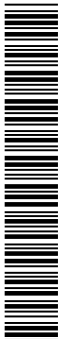
9 (ii) by striking “, or any combination  
10 thereof or option thereon;” and inserting  
11 “, or any other similar agreement;”; and

12 (iii) by adding at the end the fol-  
13 lowing:

14 “(B) any combination of agreements or  
15 transactions referred to in subparagraphs (A)  
16 and (C);

17 “(C) any option to enter into an agreement  
18 or transaction referred to in subparagraph (A)  
19 or (B);

20 “(D) a master agreement that provides for  
21 an agreement or transaction referred to in sub-  
22 paragraph (A), (B), or (C), together with all  
23 supplements to any such master agreement,  
24 without regard to whether such master agree-  
25 ment provides for an agreement or transaction

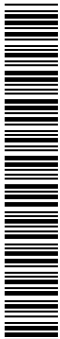


1 that is not a forward contract under this para-  
2 graph, except that such master agreement shall  
3 be considered to be a forward contract under  
4 this paragraph only with respect to each agree-  
5 ment or transaction under such master agree-  
6 ment that is referred to in subparagraph (A),  
7 (B), or (C); or

8 “(E) any security agreement or arrange-  
9 ment, or other credit enhancement related to  
10 any agreement or transaction referred to in  
11 subparagraph (A), (B), (C), or (D), including  
12 any guarantee or reimbursement obligation by  
13 or to a forward contract merchant or financial  
14 participant in connection with any agreement or  
15 transaction referred to in any such subpara-  
16 graph, but not to exceed the damages in con-  
17 nection with any such agreement or transaction,  
18 measured in accordance with section 562 of this  
19 title;”;

20 (B) in paragraph (46), by striking “on any  
21 day during the period beginning 90 days before  
22 the date of” and inserting “at any time before”;

23 (C) by amending paragraph (47) to read  
24 as follows:



1           “(47) ‘repurchase agreement’ (which definition  
2 also applies to a reverse repurchase agreement)—

3           “(A) means—

4           “(i) an agreement, including related  
5 terms, which provides for the transfer of  
6 one or more certificates of deposit, mort-  
7 gage related securities (as defined in sec-  
8 tion 3 of the Securities Exchange Act of  
9 1934), mortgage loans, interests in mort-  
10 gage related securities or mortgage loans,  
11 eligible bankers’ acceptances, qualified for-  
12 eign government securities (defined as a  
13 security that is a direct obligation of, or  
14 that is fully guaranteed by, the central  
15 government of a member of the Organiza-  
16 tion for Economic Cooperation and Devel-  
17 opment), or securities that are direct obli-  
18 gations of, or that are fully guaranteed by,  
19 the United States or any agency of the  
20 United States against the transfer of funds  
21 by the transferee of such certificates of de-  
22 posit, eligible bankers’ acceptances, securi-  
23 ties, mortgage loans, or interests, with a  
24 simultaneous agreement by such transferee  
25 to transfer to the transferor thereof certifi-



1 cates of deposit, eligible bankers' accept-  
2 ance, securities, mortgage loans, or inter-  
3 ests of the kind described in this clause, at  
4 a date certain not later than 1 year after  
5 such transfer or on demand, against the  
6 transfer of funds;

7 “(ii) any combination of agreements  
8 or transactions referred to in clauses (i)  
9 and (iii);

10 “(iii) an option to enter into an agree-  
11 ment or transaction referred to in clause  
12 (i) or (ii);

13 “(iv) a master agreement that pro-  
14 vides for an agreement or transaction re-  
15 ferred to in clause (i), (ii), or (iii), together  
16 with all supplements to any such master  
17 agreement, without regard to whether such  
18 master agreement provides for an agree-  
19 ment or transaction that is not a repur-  
20 chase agreement under this paragraph, ex-  
21 cept that such master agreement shall be  
22 considered to be a repurchase agreement  
23 under this paragraph only with respect to  
24 each agreement or transaction under the



1 master agreement that is referred to in  
2 clause (i), (ii), or (iii); or

3 “(v) any security agreement or ar-  
4 rangement or other credit enhancement re-  
5 lated to any agreement or transaction re-  
6 ferred to in clause (i), (ii), (iii), or (iv), in-  
7 cluding any guarantee or reimbursement  
8 obligation by or to a repo participant or fi-  
9 nancial participant in connection with any  
10 agreement or transaction referred to in  
11 any such clause, but not to exceed the  
12 damages in connection with any such  
13 agreement or transaction, measured in ac-  
14 cordance with section 562 of this title; and

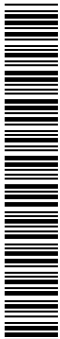
15 “(B) does not include a repurchase obliga-  
16 tion under a participation in a commercial  
17 mortgage loan;”;

18 (D) in paragraph (48), by inserting “, or  
19 exempt from such registration under such sec-  
20 tion pursuant to an order of the Securities and  
21 Exchange Commission,” after “1934”; and

22 (E) by amending paragraph (53B) to read  
23 as follows:

24 “(53B) ‘swap agreement’—

25 “(A) means—



1           “(i) any agreement, including the  
2 terms and conditions incorporated by ref-  
3 erence in such agreement, which is—

4                   “(I) an interest rate swap, op-  
5 tion, future, or forward agreement, in-  
6 cluding a rate floor, rate cap, rate col-  
7 lar, cross-currency rate swap, and  
8 basis swap;

9                   “(II) a spot, same day-tomorrow,  
10 tomorrow-next, forward, or other for-  
11 eign exchange or precious metals  
12 agreement;

13                   “(III) a currency swap, option,  
14 future, or forward agreement;

15                   “(IV) an equity index or equity  
16 swap, option, future, or forward  
17 agreement;

18                   “(V) a debt index or debt swap,  
19 option, future, or forward agreement;

20                   “(VI) a total return, credit  
21 spread or credit swap, option, future,  
22 or forward agreement;

23                   “(VII) a commodity index or a  
24 commodity swap, option, future, or  
25 forward agreement; or



1                   “(VIII) a weather swap, weather  
2                   derivative, or weather option;

3                   “(ii) any agreement or transaction  
4                   that is similar to any other agreement or  
5                   transaction referred to in this paragraph  
6                   and that—

7                   “(I) is of a type that has been, is  
8                   presently, or in the future becomes,  
9                   the subject of recurrent dealings in  
10                  the swap markets (including terms  
11                  and conditions incorporated by ref-  
12                  erence therein); and

13                  “(II) is a forward, swap, future,  
14                  or option on one or more rates, cur-  
15                  rencies, commodities, equity securities,  
16                  or other equity instruments, debt se-  
17                  curities or other debt instruments,  
18                  quantitative measures associated with  
19                  an occurrence, extent of an occur-  
20                  rence, or contingency associated with  
21                  a financial, commercial, or economic  
22                  consequence, or economic or financial  
23                  indices or measures of economic or fi-  
24                  nancial risk or value;





1           “(iii) any combination of agreements  
2 or transactions referred to in this subpara-  
3 graph;

4           “(iv) any option to enter into an  
5 agreement or transaction referred to in  
6 this subparagraph;

7           “(v) a master agreement that provides  
8 for an agreement or transaction referred to  
9 in clause (i), (ii), (iii), or (iv), together  
10 with all supplements to any such master  
11 agreement, and without regard to whether  
12 the master agreement contains an agree-  
13 ment or transaction that is not a swap  
14 agreement under this paragraph, except  
15 that the master agreement shall be consid-  
16 ered to be a swap agreement under this  
17 paragraph only with respect to each agree-  
18 ment or transaction under the master  
19 agreement that is referred to in clause (i),  
20 (ii), (iii), or (iv); or

21           “(vi) any security agreement or ar-  
22 rangement or other credit enhancement re-  
23 lated to any agreements or transactions re-  
24 ferred to in clause (i) through (v), includ-  
25 ing any guarantee or reimbursement obli-



1           gation by or to a swap participant or fi-  
2           nancial participant in connection with any  
3           agreement or transaction referred to in  
4           any such clause, but not to exceed the  
5           damages in connection with any such  
6           agreement or transaction, measured in ac-  
7           cordance with section 562 of this title; and

8           “(B) is applicable for purposes of this title  
9           only, and shall not be construed or applied so  
10          as to challenge or affect the characterization,  
11          definition, or treatment of any swap agreement  
12          under any other statute, regulation, or rule, in-  
13          cluding the Securities Act of 1933, the Securi-  
14          ties Exchange Act of 1934, the Public Utility  
15          Holding Company Act of 1935, the Trust In-  
16          denture Act of 1939, the Investment Company  
17          Act of 1940, the Investment Advisers Act of  
18          1940, the Securities Investor Protection Act of  
19          1970, the Commodity Exchange Act, the  
20          Gramm-Leach-Bliley Act, and the Legal Cer-  
21          tainty for Bank Products Act of 2000;”;

22          (2) in section 741(7), by striking paragraph (7)  
23          and inserting the following:

24                 “(7) ‘securities contract’—

25                         “(A) means—



1           “(i) a contract for the purchase, sale,  
2           or loan of a security, a certificate of de-  
3           posit, a mortgage loan or any interest in a  
4           mortgage loan, a group or index of securi-  
5           ties, certificates of deposit, or mortgage  
6           loans or interests therein (including an in-  
7           terest therein or based on the value there-  
8           of), or option on any of the foregoing, in-  
9           cluding an option to purchase or sell any  
10          such security, certificate of deposit, mort-  
11          gage loan, interest, group or index, or op-  
12          tion, and including any repurchase or re-  
13          verse repurchase transaction on any such  
14          security, certificate of deposit, mortgage  
15          loan, interest, group or index, or option;

16           “(ii) any option entered into on a na-  
17          tional securities exchange relating to for-  
18          eign currencies;

19           “(iii) the guarantee by or to any secu-  
20          rities clearing agency of a settlement of  
21          cash, securities, certificates of deposit,  
22          mortgage loans or interests therein, group  
23          or index of securities, or mortgage loans or  
24          interests therein (including any interest  
25          therein or based on the value thereof), or



1 option on any of the foregoing, including  
2 an option to purchase or sell any such se-  
3 curity, certificate of deposit, mortgage  
4 loan, interest, group or index, or option;

5 “(iv) any margin loan;

6 “(v) any other agreement or trans-  
7 action that is similar to an agreement or  
8 transaction referred to in this subpara-  
9 graph;

10 “(vi) any combination of the agree-  
11 ments or transactions referred to in this  
12 subparagraph;

13 “(vii) any option to enter into any  
14 agreement or transaction referred to in  
15 this subparagraph;

16 “(viii) a master agreement that pro-  
17 vides for an agreement or transaction re-  
18 ferred to in clause (i), (ii), (iii), (iv), (v),  
19 (vi), or (vii), together with all supplements  
20 to any such master agreement, without re-  
21 gard to whether the master agreement pro-  
22 vides for an agreement or transaction that  
23 is not a securities contract under this sub-  
24 paragraph, except that such master agree-  
25 ment shall be considered to be a securities



1 contract under this subparagraph only with  
2 respect to each agreement or transaction  
3 under such master agreement that is re-  
4 ferred to in clause (i), (ii), (iii), (iv), (v),  
5 (vi), or (vii); or

6 “(ix) any security agreement or ar-  
7 rangement or other credit enhancement re-  
8 lated to any agreement or transaction re-  
9 ferred to in this subparagraph, including  
10 any guarantee or reimbursement obligation  
11 by or to a stockbroker, securities clearing  
12 agency, financial institution, or financial  
13 participant in connection with any agree-  
14 ment or transaction referred to in this sub-  
15 paragraph, but not to exceed the damages  
16 in connection with any such agreement or  
17 transaction, measured in accordance with  
18 section 562 of this title; and

19 “(B) does not include any purchase, sale,  
20 or repurchase obligation under a participation  
21 in a commercial mortgage loan;” and

22 (3) in section 761(4)—

23 (A) by striking “or” at the end of subpara-  
24 graph (D); and

25 (B) by adding at the end the following:



1           “(F) any other agreement or transaction  
2 that is similar to an agreement or transaction  
3 referred to in this paragraph;

4           “(G) any combination of the agreements or  
5 transactions referred to in this paragraph;

6           “(H) any option to enter into an agree-  
7 ment or transaction referred to in this para-  
8 graph;

9           “(I) a master agreement that provides for  
10 an agreement or transaction referred to in sub-  
11 paragraph (A), (B), (C), (D), (E), (F), (G), or  
12 (H), together with all supplements to such mas-  
13 ter agreement, without regard to whether the  
14 master agreement provides for an agreement or  
15 transaction that is not a commodity contract  
16 under this paragraph, except that the master  
17 agreement shall be considered to be a com-  
18 modity contract under this paragraph only with  
19 respect to each agreement or transaction under  
20 the master agreement that is referred to in sub-  
21 paragraph (A), (B), (C), (D), (E), (F), (G), or  
22 (H); or

23           “(J) any security agreement or arrange-  
24 ment or other credit enhancement related to  
25 any agreement or transaction referred to in this



1 paragraph, including any guarantee or reim-  
2 bursement obligation by or to a commodity  
3 broker or financial participant in connection  
4 with any agreement or transaction referred to  
5 in this paragraph, but not to exceed the dam-  
6 ages in connection with any such agreement or  
7 transaction, measured in accordance with sec-  
8 tion 562 of this title;”.

9 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
10 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
11 CHANT.—Section 101 of title 11, United States Code, is  
12 amended—

13 (1) by striking paragraph (22) and inserting  
14 the following:

15 “(22) ‘financial institution’ means—

16 “(A) a Federal reserve bank, or an entity  
17 (domestic or foreign) that is a commercial or  
18 savings bank, industrial savings bank, savings  
19 and loan association, trust company, federally-  
20 insured credit union, or receiver or conservator  
21 for such entity and, when any such Federal re-  
22 serve bank, receiver, conservator or entity is  
23 acting as agent or custodian for a customer in  
24 connection with a securities contract (as defined  
25 in section 741) such customer; or



1           “(B) in connection with a securities con-  
2           tract (as defined in section 741) an investment  
3           company registered under the Investment Com-  
4           pany Act of 1940;”;

5           (2) by inserting after paragraph (22) the fol-  
6           lowing:

7           “(22A) ‘financial participant’ means—

8           “(A) an entity that, at the time it enters  
9           into a securities contract, commodity contract,  
10          swap agreement, repurchase agreement, or for-  
11          ward contract, or at the time of the filing of the  
12          petition, has one or more agreements or trans-  
13          actions described in paragraph (1), (2), (3), (4),  
14          (5), or (6) of section 561(a) with the debtor or  
15          any other entity (other than an affiliate) of a  
16          total gross dollar value of not less than  
17          \$1,000,000,000 in notional or actual principal  
18          amount outstanding on any day during the pre-  
19          vious 15-month period, or has gross mark-to-  
20          market positions of not less than \$100,000,000  
21          (aggregated across counterparties) in one or  
22          more such agreements or transactions with the  
23          debtor or any other entity (other than an affil-  
24          iate) on any day during the previous 15-month  
25          period; or





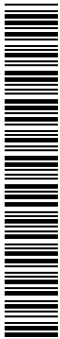
1           “(B) a clearing organization (as defined in  
2           section 402 of the Federal Deposit Insurance  
3           Corporation Improvement Act of 1991);”; and  
4           (3) by striking paragraph (26) and inserting  
5           the following:

6           “(26) ‘forward contract merchant’ means a  
7           Federal reserve bank, or an entity the business of  
8           which consists in whole or in part of entering into  
9           forward contracts as or with merchants in a com-  
10          modity (as defined in section 761) or any similar  
11          good, article, service, right, or interest which is pres-  
12          ently or in the future becomes the subject of dealing  
13          in the forward contract trade;”.

14          (c) DEFINITION OF MASTER NETTING AGREEMENT  
15          AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
16          tion 101 of title 11, United States Code, is amended by  
17          inserting after paragraph (38) the following new para-  
18          graphs:

19                 “(38A) ‘master netting agreement’—

20                         “(A) means an agreement providing for  
21                         the exercise of rights, including rights of net-  
22                         ting, setoff, liquidation, termination, accelera-  
23                         tion, or close out, under or in connection with  
24                         one or more contracts that are described in any  
25                         one or more of paragraphs (1) through (5) of



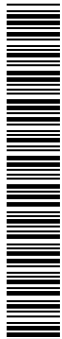
1 section 561(a), or any security agreement or ar-  
2 rangement or other credit enhancement related  
3 to one or more of the foregoing, including any  
4 guarantee or reimbursement obligation related  
5 to 1 or more of the foregoing; and

6 “(B) if the agreement contains provisions  
7 relating to agreements or transactions that are  
8 not contracts described in paragraphs (1)  
9 through (5) of section 561(a), shall be deemed  
10 to be a master netting agreement only with re-  
11 spect to those agreements or transactions that  
12 are described in any one or more of paragraphs  
13 (1) through (5) of section 561(a);

14 “(38B) ‘master netting agreement participant’  
15 means an entity that, at any time before the filing  
16 of the petition, is a party to an outstanding master  
17 netting agreement with the debtor;”.

18 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
19 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
20 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
21 MENTS UNDER THE AUTOMATIC-STAY.—

22 (1) IN GENERAL.—Section 362(b) of title 11,  
23 United States Code, is amended—



1 (A) in paragraph (6), by inserting “,  
2 pledged to, under the control of,” after “held  
3 by”;

4 (B) in paragraph (7), by inserting “,  
5 pledged to, under the control of,” after “held  
6 by”;

7 (C) by striking paragraph (17) and insert-  
8 ing the following:

9 “(17) under subsection (a), of the setoff by a  
10 swap participant or financial participant of a mutual  
11 debt and claim under or in connection with one or  
12 more swap agreements that constitutes the setoff of  
13 a claim against the debtor for any payment or other  
14 transfer of property due from the debtor under or in  
15 connection with any swap agreement against any  
16 payment due to the debtor from the swap partici-  
17 pant or financial participant under or in connection  
18 with any swap agreement or against cash, securities,  
19 or other property held by, pledged to, under the con-  
20 trol of, or due from such swap participant or finan-  
21 cial participant to margin, guarantee, secure, or set-  
22 tle any swap agreement;”;

23 (D) in paragraph (18) by striking the pe-  
24 riod at the end and inserting “; or”; and



1 (E) by inserting after paragraph (18) the  
2 following new paragraph:

3 “(19) under subsection (a), of the setoff by a  
4 master netting agreement participant of a mutual  
5 debt and claim under or in connection with one or  
6 more master netting agreements or any contract or  
7 agreement subject to such agreements that con-  
8 stitutes the setoff of a claim against the debtor for  
9 any payment or other transfer of property due from  
10 the debtor under or in connection with such agree-  
11 ments or any contract or agreement subject to such  
12 agreements against any payment due to the debtor  
13 from such master netting agreement participant  
14 under or in connection with such agreements or any  
15 contract or agreement subject to such agreements or  
16 against cash, securities, or other property held by,  
17 pledged to, under the control of, or due from such  
18 master netting agreement participant to margin,  
19 guarantee, secure, or settle such agreements or any  
20 contract or agreement subject to such agreements,  
21 to the extent that such participant is eligible to exer-  
22 cise such offset rights under paragraph (6), (7), or  
23 (17) for each individual contract covered by the mas-  
24 ter netting agreement in issue.”.



1           (2) LIMITATION.—Section 362 of title 11,  
2           United States Code, is amended by adding at the  
3           end the following:

4           “(i) The exercise of rights not subject to the stay  
5           arising under subsection (a) pursuant to paragraph (6),  
6           (7), (17), or (19) of subsection (b) shall not be stayed  
7           by any order of a court or administrative agency in any  
8           proceeding under this title.”.

9           (e) LIMITATION OF AVOIDANCE POWERS UNDER  
10          MASTER NETTING AGREEMENT.—Section 546 of title 11,  
11          United States Code, is amended—

12                 (1) in subsection (g) (as added by section 103  
13                 of Public Law 101–311)—

14                         (A) by striking “under a swap agreement”;

15                         (B) by striking “in connection with a swap  
16                         agreement” and inserting “under or in connec-  
17                         tion with any swap agreement”; and

18                         (C) by inserting “or financial participant”  
19                         after “swap participant” each place such term  
20                         appears; and

21                 (2) by adding at the end the following:

22                 “(i) Notwithstanding sections 544, 545, 547,  
23                 548(a)(1)(B), and 548(b) the trustee may not avoid a  
24                 transfer made by or to a master netting agreement partici-  
25                 pant under or in connection with any master netting



1 agreement or any individual contract covered thereby that  
2 is made before the commencement of the case, except  
3 under section 548(a)(1)(A) and except to the extent that  
4 the trustee could otherwise avoid such a transfer made  
5 under an individual contract covered by such master net-  
6 ting agreement.”.

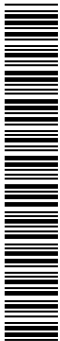
7 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
8 AGREEMENTS.—Section 548(d)(2) of title 11, United  
9 States Code, is amended—

10 (1) in subparagraph (C), by striking “and” at  
11 the end;

12 (2) in subparagraph (D), by striking the period  
13 and inserting “; and”; and

14 (3) by adding at the end the following new sub-  
15 paragraph:

16 “(E) a master netting agreement participant  
17 that receives a transfer in connection with a master  
18 netting agreement or any individual contract covered  
19 thereby takes for value to the extent of such trans-  
20 fer, except that, with respect to a transfer under any  
21 individual contract covered thereby, to the extent  
22 that such master netting agreement participant oth-  
23 erwise did not take (or is otherwise not deemed to  
24 have taken) such transfer for value.”.



1 (g) TERMINATION OR ACCELERATION OF SECURITIES  
2 CONTRACTS.—Section 555 of title 11, United States Code,  
3 is amended—

4 (1) by amending the section heading to read as  
5 follows:

6 **“§ 555. Contractual right to liquidate, terminate, or  
7 accelerate a securities contract”;**

8 (2) in the first sentence, by striking “liquida-  
9 tion” and inserting “liquidation, termination, or ac-  
10 celeration”.

11 (h) TERMINATION OR ACCELERATION OF COMMOD-  
12 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
13 United States Code, is amended—

14 (1) by amending the section heading to read as  
15 follows:

16 **“§ 556. Contractual right to liquidate, terminate, or  
17 accelerate a commodities contract or for-  
18 ward contract”;**

19 (2) in the first sentence, by striking “liquida-  
20 tion” and inserting “liquidation, termination, or ac-  
21 celeration”; and

22 (3) in the second sentence, by striking “As  
23 used” and all that follows through “right,” and in-  
24 serting “As used in this section, the term ‘contract-  
25 tual right’ includes a right set forth in a rule or



1 bylaw of a derivatives clearing organization (as de-  
2 fined in the Commodity Exchange Act), a multilat-  
3 eral clearing organization (as defined in the Federal  
4 Deposit Insurance Corporation Improvement Act of  
5 1991), a national securities exchange, a national se-  
6 curities association, a securities clearing agency, a  
7 contract market designated under the Commodity  
8 Exchange Act, a derivatives transaction execution  
9 facility registered under the Commodity Exchange  
10 Act, or a board of trade (as defined in the Com-  
11 modity Exchange Act) or in a resolution of the gov-  
12 erning board thereof and a right,”.

13 (i) TERMINATION OR ACCELERATION OF REPUR-  
14 CHASE AGREEMENTS.—Section 559 of title 11, United  
15 States Code, is amended—

16 (1) by amending the section heading to read as  
17 follows:

18 “§ 559. **Contractual right to liquidate, terminate, or**  
19 **accelerate a repurchase agreement”;**

20 (2) in the first sentence, by striking “liquida-  
21 tion” and inserting “liquidation, termination, or ac-  
22 celeration”; and

23 (3) in the third sentence, by striking “As used”  
24 and all that follows through “right,” and inserting  
25 “As used in this section, the term ‘contractual right’





1 includes a right set forth in a rule or bylaw of a de-  
2 rivatives clearing organization (as defined in the  
3 Commodity Exchange Act), a multilateral clearing  
4 organization (as defined in the Federal Deposit In-  
5 surance Corporation Improvement Act of 1991), a  
6 national securities exchange, a national securities as-  
7 sociation, a securities clearing agency, a contract  
8 market designated under the Commodity Exchange  
9 Act, a derivatives transaction execution facility reg-  
10 istered under the Commodity Exchange Act, or a  
11 board of trade (as defined in the Commodity Ex-  
12 change Act) or in a resolution of the governing  
13 board thereof and a right.”.

14 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
15 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
16 States Code, is amended—

17 (1) by amending the section heading to read as  
18 follows:

19 “§ 560. **Contractual right to liquidate, terminate, or**  
20 **accelerate a swap agreement”;**

21 (2) in the first sentence, by striking “termi-  
22 nation of a swap agreement” and inserting “liquida-  
23 tion, termination, or acceleration of one or more  
24 swap agreements”;



1           (3) by striking “in connection with any swap  
2 agreement” and inserting “in connection with the  
3 termination, liquidation, or acceleration of one or  
4 more swap agreements”; and

5           (4) in the second sentence, by striking “As  
6 used” and all that follows through “right,” and in-  
7 serting “As used in this section, the term ‘contractual  
8 right’ includes a right set forth in a rule or  
9 bylaw of a derivatives clearing organization (as de-  
10 fined in the Commodity Exchange Act), a multilat-  
11 eral clearing organization (as defined in the Federal  
12 Deposit Insurance Corporation Improvement Act of  
13 1991), a national securities exchange, a national se-  
14 curities association, a securities clearing agency, a  
15 contract market designated under the Commodity  
16 Exchange Act, a derivatives transaction execution  
17 facility registered under the Commodity Exchange  
18 Act, or a board of trade (as defined in the Com-  
19modity Exchange Act) or in a resolution of the gov-  
20 erning board thereof and a right,”.

21           (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
22 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
23 ACROSS CONTRACTS.—



1           (1) IN GENERAL.—Title 11, United States  
2           Code, is amended by inserting after section 560 the  
3           following:

4    **“§ 561. Contractual right to terminate, liquidate, ac-**  
5           **celerate, or offset under a master netting**  
6           **agreement and across contracts; pro-**  
7           **ceedings under Section 304**

8           “(a) Subject to subsection (b), the exercise of any  
9           contractual right, because of a condition of the kind speci-  
10          fied in section 365(e)(1), to cause the termination, liquida-  
11          tion, or acceleration of or to offset or net termination val-  
12          ues, payment amounts, or other transfer obligations aris-  
13          ing under or in connection with one or more (or the termi-  
14          nation, liquidation, or acceleration of one or more)—

15               “(1) securities contracts, as defined in section  
16               741(7);

17               “(2) commodity contracts, as defined in section  
18               761(4);

19               “(3) forward contracts;

20               “(4) repurchase agreements;

21               “(5) swap agreements; or

22               “(6) master netting agreements,

23          shall not be stayed, avoided, or otherwise limited by oper-  
24          ation of any provision of this title or by any order of a



1 court or administrative agency in any proceeding under  
2 this title.

3 “(b)(1) A party may exercise a contractual right de-  
4 scribed in subsection (a) to terminate, liquidate, or accel-  
5 erate only to the extent that such party could exercise such  
6 a right under section 555, 556, 559, or 560 for each indi-  
7 vidual contract covered by the master netting agreement  
8 in issue.

9 “(2) If a debtor is a commodity broker subject to sub-  
10 chapter IV of chapter 7—

11 “(A) a party may not net or offset an obligation  
12 to the debtor arising under, or in connection with,  
13 a commodity contract traded on or subject to the  
14 rules of a contract market designated under the  
15 Commodity Exchange Act or a derivatives trans-  
16 action execution facility registered under the Com-  
17modity Exchange Act against any claim arising  
18 under, or in connection with, other instruments, con-  
19 tracts, or agreements listed in subsection (a) except  
20 to the extent that the party has positive net equity  
21 in the commodity accounts at the debtor, as cal-  
22 culated under such subchapter; and

23 “(B) another commodity broker may not net or  
24 offset an obligation to the debtor arising under, or  
25 in connection with, a commodity contract entered



1 into or held on behalf of a customer of the debtor  
2 and traded on or subject to the rules of a contract  
3 market designated under the Commodity Exchange  
4 Act or a derivatives transaction execution facility  
5 registered under the Commodity Exchange Act  
6 against any claim arising under, or in connection  
7 with, other instruments, contracts, or agreements  
8 listed in subsection (a).

9 “(3) No provision of subparagraph (A) or (B) of  
10 paragraph (2) shall prohibit the offset of claims and obli-  
11 gations that arise under—

12 “(A) a cross-margining agreement or similar  
13 arrangement that has been approved by the Com-  
14modity Futures Trading Commission or submitted  
15 to the Commodity Futures Trading Commission  
16 under paragraph (1) or (2) of section 5c(c) of the  
17 Commodity Exchange Act and has not been abro-  
18gated or rendered ineffective by the Commodity Fu-  
19tures Trading Commission; or

20 “(B) any other netting agreement between a  
21 clearing organization (as defined in section 761) and  
22 another entity that has been approved by the Com-  
23modity Futures Trading Commission.

24 “(c) As used in this section, the term ‘contractual  
25 right’ includes a right set forth in a rule or bylaw of a



1 derivatives clearing organization (as defined in the Com-  
2 modity Exchange Act), a multilateral clearing organiza-  
3 tion (as defined in the Federal Deposit Insurance Cor-  
4 poration Improvement Act of 1991), a national securities  
5 exchange, a national securities association, a securities  
6 clearing agency, a contract market designated under the  
7 Commodity Exchange Act, a derivatives transaction execu-  
8 tion facility registered under the Commodity Exchange  
9 Act, or a board of trade (as defined in the Commodity  
10 Exchange Act) or in a resolution of the governing board  
11 thereof, and a right, whether or not evidenced in writing,  
12 arising under common law, under law merchant, or by rea-  
13 son of normal business practice.

14 “(d) Any provisions of this title relating to securities  
15 contracts, commodity contracts, forward contracts, repur-  
16 chase agreements, swap agreements, or master netting  
17 agreements shall apply in a case under section 304, so  
18 that enforcement of contractual provisions of such con-  
19 tracts and agreements in accordance with their terms will  
20 not be stayed or otherwise limited by operation of any pro-  
21 vision of this title or by order of a court in any case under  
22 this title, and to limit avoidance powers to the same extent  
23 as in a proceeding under chapter 7 or 11 of this title (such  
24 enforcement not to be limited based on the presence or  
25 absence of assets of the debtor in the United States).”.



1           (2) CONFORMING AMENDMENT.—The table of  
 2           sections for chapter 5 of title 11, United States  
 3           Code, is amended by inserting after the item relating  
 4           to section 560 the following:

          “561. Contractual right to terminate, liquidate, accelerate, or offset under a  
           master netting agreement and across contracts; proceedings  
           under section 304.”.

5           (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
 6           United States Code, is amended by inserting after section  
 7           766 the following:

8           **“§ 767. Commodity broker liquidation and forward**  
 9                       **contract merchants, commodity brokers,**  
 10                      **stockbrokers, financial institutions, fi-**  
 11                      **ancial participants, securities clearing**  
 12                      **agencies, swap participants, repo partici-**  
 13                      **pants, and master netting agreement par-**  
 14                      **ticipants**

15           “Notwithstanding any other provision of this title,  
 16           the exercise of rights by a forward contract merchant,  
 17           commodity broker, stockbroker, financial institution, fi-  
 18           nancial participant, securities clearing agency, swap par-  
 19           ticipant, repo participant, or master netting agreement  
 20           participant under this title shall not affect the priority of  
 21           any unsecured claim it may have after the exercise of such  
 22           rights.”.



1 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
2 United States Code, is amended by inserting after section  
3 752 the following:

4 **“§ 753. Stockbroker liquidation and forward contract**  
5 **merchants, commodity brokers, stock-**  
6 **brokers, financial institutions, financial**  
7 **participants, securities clearing agencies,**  
8 **swap participants, repo participants, and**  
9 **master netting agreement participants**

10 “Notwithstanding any other provision of this title,  
11 the exercise of rights by a forward contract merchant,  
12 commodity broker, stockbroker, financial institution, secu-  
13 rities clearing agency, swap participant, repo participant,  
14 financial participant, or master netting agreement partici-  
15 pant under this title shall not affect the priority of any  
16 unsecured claim it may have after the exercise of such  
17 rights.”.

18 (n) SETOFF.—Section 553 of title 11, United States  
19 Code, is amended—

20 (1) in subsection (a)(2)(B)(ii), by inserting be-  
21 fore the semicolon the following: “(except for a  
22 setoff of a kind described in section 362(b)(6),  
23 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559,  
24 560, or 561)”;





1           (2) in subsection (a)(3)(C), by inserting before  
2           the period the following: “(except for a setoff of a  
3           kind described in section 362(b)(6), 362(b)(7),  
4           362(b)(17), 362(b)(19), 555, 556, 559, 560, or 561  
5           of this title)”;

6           (3) in subsection (b)(1), by striking  
7           “362(b)(14),” and inserting “362(b)(17),  
8           362(b)(19), 555, 556, 559, 560, 561.”.

9           (o) SECURITIES CONTRACTS, COMMODITY CON-  
10          TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
11          States Code, is amended—

12           (1) in section 362(b)(6), by striking “financial  
13           institutions,” each place such term appears and in-  
14           serting “financial institution, financial participant,”;

15           (2) in sections 362(b)(7) and 546(f), by insert-  
16           ing “or financial participant” after “repo partici-  
17           pant” each place such term appears;

18           (3) in section 546(e), by inserting “financial  
19           participant,” after “financial institution,”;

20           (4) in section 548(d)(2)(B), by inserting “fi-  
21           nancial participant,” after “financial institution,”;

22           (5) in section 548(d)(2)(C), by inserting “or fi-  
23           nancial participant” after “repo participant”;

24           (6) in section 548(d)(2)(D), by inserting “or fi-  
25           nancial participant” after “swap participant”;



1 (7) in section 555—

2 (A) by inserting “financial participant,”  
3 after “financial institution,”; and

4 (B) by striking the second sentence and in-  
5 serting the following: “As used in this section,  
6 the term ‘contractual right’ includes a right set  
7 forth in a rule or bylaw of a derivatives clearing  
8 organization (as defined in the Commodity Ex-  
9 change Act), a multilateral clearing organiza-  
10 tion (as defined in the Federal Deposit Insur-  
11 ance Corporation Improvement Act of 1991), a  
12 national securities exchange, a national securi-  
13 ties association, a securities clearing agency, a  
14 contract market designated under the Com-  
15modity Exchange Act, a derivatives transaction  
16 execution facility registered under the Com-  
17modity Exchange Act, or a board of trade (as  
18 defined in the Commodity Exchange Act), or in  
19 a resolution of the governing board thereof, and  
20 a right, whether or not in writing, arising under  
21 common law, under law merchant, or by reason  
22 of normal business practice”;

23 (8) in section 556, by inserting “, financial par-  
24 ticipant,” after “commodity broker”;



1 (9) in section 559, by inserting “or financial  
2 participant” after “repo participant” each place  
3 such term appears; and

4 (10) in section 560, by inserting “or financial  
5 participant” after “swap participant”.

6 (p) CONFORMING AMENDMENTS.—Title 11, United  
7 States Code, is amended—

8 (1) in the table of sections for chapter 5—

9 (A) by amending the items relating to sec-  
10 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-  
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-  
tract or forward contract.”;

11 and

12 (B) by amending the items relating to sec-  
13 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase  
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-  
ment.”;

14 and

15 (2) in the table of sections for chapter 7—

16 (A) by inserting after the item relating to  
17 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-  
modity brokers, stockbrokers, financial institutions, financial  
participants, securities clearing agencies, swap participants,  
repo participants, and master netting agreement participants.”;

18 and



1 (B) by inserting after the item relating to  
2 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

3 **SEC. 5082H. RECORDKEEPING REQUIREMENTS.**

4 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

5 Section 11(e)(8) of the Federal Deposit Insurance Act (12  
6 U.S.C. 1821(e)(8)) is amended by adding at the end the  
7 following new subparagraph:

8 “(H) RECORDKEEPING REQUIREMENTS.—

9 The Corporation, in consultation with the ap-  
10 propriate Federal banking agencies and the Na-  
11 tional Credit Union Administration Board, may  
12 prescribe regulations requiring more detailed  
13 recordkeeping by any insured depository institu-  
14 tion with respect to qualified financial contracts  
15 (including market valuations) only if such in-  
16 sured depository institution is in a troubled  
17 condition (as such term is defined by the Cor-  
18 poration pursuant to section 32).”.

19 (b) INSURED CREDIT UNIONS.—Section 207(c)(8) of  
20 the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
21 amended by adding at the end the following new subpara-  
22 graph:



1           “(H) RECORDKEEPING REQUIREMENTS.—  
2           The Board, in consultation with the appropriate  
3           Federal banking agencies, may prescribe regula-  
4           tions requiring more detailed recordkeeping by  
5           any insured credit union with respect to quali-  
6           fied financial contracts (including market valu-  
7           ations) only if such insured credit union is in  
8           a troubled condition (as such term is defined by  
9           the Board pursuant to section 212).”.

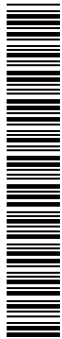
10 **SEC. 5082I. EXEMPTIONS FROM CONTEMPORANEOUS EXE-**  
11 **CUTION REQUIREMENT.**

12           Section 13(e)(2) of the Federal Deposit Insurance  
13 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

14           “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
15 EXECUTION REQUIREMENT.—An agreement to pro-  
16 vide for the lawful collateralization of—

17           “(A) deposits of, or other credit extension  
18 by, a Federal, State, or local governmental enti-  
19 ty, or of any depositor referred to in section  
20 11(a)(2), including an agreement to provide col-  
21 lateral in lieu of a surety bond;

22           “(B) bankruptcy estate funds pursuant to  
23 section 345(b)(2) of title 11, United States  
24 Code;



1           “(C) extensions of credit, including any  
2           overdraft, from a Federal reserve bank or Fed-  
3           eral home loan bank; or

4           “(D) one or more qualified financial con-  
5           tracts, as defined in section 11(e)(8)(D),  
6           shall not be deemed invalid pursuant to paragraph  
7           (1)(B) solely because such agreement was not exe-  
8           cuted contemporaneously with the acquisition of the  
9           collateral or because of pledges, delivery, or substi-  
10          tution of the collateral made in accordance with such  
11          agreement.”.

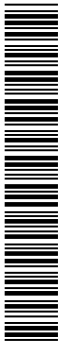
12 **SEC. 5082J. DAMAGE MEASURE.**

13          (a) IN GENERAL.—Title 11, United States Code, is  
14          amended—

15                 (1) by inserting after section 561, as added by  
16                 section 5082G(k)(1) of this subchapter, the fol-  
17                 lowing:

18          **“§ 562. Timing of damage measurement in connection**  
19                 **with swap agreements, securities con-**  
20                 **tracts, forward contracts, commodity con-**  
21                 **tracts, repurchase agreements, and mas-**  
22                 **ter netting agreements**

23                 “(a) If the trustee rejects a swap agreement, securi-  
24                 ties contract (as defined in section 741), forward contract,  
25                 commodity contract (as defined in section 761), repur-



1 chase agreement, or master netting agreement pursuant  
2 to section 365(a), or if a forward contract merchant,  
3 stockbroker, financial institution, securities clearing agen-  
4 cy, repo participant, financial participant, master netting  
5 agreement participant, or swap participant liquidates, ter-  
6 minates, or accelerates such contract or agreement, dam-  
7 ages shall be measured as of the earlier of—

8           “(1) the date of such rejection; or

9           “(2) the date or dates of such liquidation, ter-  
10 mination, or acceleration.

11          “(b) If there are not any commercially reasonable de-  
12 terminants of value as of any date referred to in para-  
13 graph (1) or (2) of subsection (a), damages shall be meas-  
14 ured as of the earliest subsequent date or dates on which  
15 there are commercially reasonable determinants of value.

16          “(c) For the purposes of subsection (b), if damages  
17 are not measured as of the date or dates of rejection, liq-  
18 uidation, termination, or acceleration, and the forward  
19 contract merchant, stockbroker, financial institution, secu-  
20 rities clearing agency, repo participant, financial partici-  
21 pant, master netting agreement participant, or swap par-  
22 ticipant or the trustee objects to the timing of the meas-  
23 urement of damages—

24           “(1) the trustee, in the case of an objection by  
25          a forward contract merchant, stockbroker, financial



1 institution, securities clearing agency, repo partici-  
2 pant, financial participant, master netting agree-  
3 ment participant, or swap participant; or

4 “(2) the forward contract merchant, stock-  
5 broker, financial institution, securities clearing agen-  
6 cy, repo participant, financial participant, master  
7 netting agreement participant, or swap participant,  
8 in the case of an objection by the trustee,

9 has the burden of proving that there were no commercially  
10 reasonable determinants of value as of such date or  
11 dates.”; and

12 (2) in the table of sections for chapter 5, by in-  
13 serting after the item relating to section 561 (as  
14 added by section 5082G(k)(2) of this subchapter)  
15 the following new item:

“562. Timing of damage measure in connection with swap agreements, securi-  
ties contracts, forward contracts, commodity contracts, repur-  
chase agreements, or master netting agreements.”.

16 (b) CLAIMS ARISING FROM REJECTION.—Section  
17 502(g) of title 11, United States Code, is amended—

18 (1) by inserting “(1)” after “(g)”; and

19 (2) by adding at the end the following:

20 “(2) A claim for damages calculated in accordance  
21 with section 562 of this title shall be allowed under sub-  
22 section (a), (b), or (c), or disallowed under subsection (d)  
23 or (e), as if such claim had arisen before the date of the  
24 filing of the petition.”.





1 **SEC. 5082K. SIPC STAY.**

2 Section 5(b)(2) of the Securities Investor Protection  
3 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
4 at the end the following new subparagraph:

5 “(C) EXCEPTION FROM STAY.—

6 “(i) Notwithstanding section 362 of  
7 title 11, United States Code, neither the  
8 filing of an application under subsection  
9 (a)(3) nor any order or decree obtained by  
10 SIPC from the court shall operate as a  
11 stay of any contractual rights of a creditor  
12 to liquidate, terminate, or accelerate a se-  
13 curities contract, commodity contract, for-  
14 ward contract, repurchase agreement, swap  
15 agreement, or master netting agreement,  
16 as those terms are defined in sections 101,  
17 741, and 761 of title 11, United States  
18 Code, to offset or net termination values,  
19 payment amounts, or other transfer obliga-  
20 tions arising under or in connection with  
21 one or more of such contracts or agree-  
22 ments, or to foreclose on any cash collat-  
23 eral pledged by the debtor, whether or not  
24 with respect to one or more of such con-  
25 tracts or agreements.



1           “(ii) Notwithstanding clause (i), such  
 2 application, order, or decree may operate  
 3 as a stay of the foreclosure on, or disposi-  
 4 tion of, securities collateral pledged by the  
 5 debtor, whether or not with respect to one  
 6 or more of such contracts or agreements,  
 7 securities sold by the debtor under a repur-  
 8 chase agreement, or securities lent under a  
 9 securities lending agreement.

10           “(iii) As used in this subparagraph,  
 11 the term ‘contractual right’ includes a  
 12 right set forth in a rule or bylaw of a na-  
 13 tional securities exchange, a national secu-  
 14 rities association, or a securities clearing  
 15 agency, a right set forth in a bylaw of a  
 16 clearing organization or contract market or  
 17 in a resolution of the governing board  
 18 thereof, and a right, whether or not in  
 19 writing, arising under common law, under  
 20 law merchant, or by reason of normal busi-  
 21 ness practice.”.

22 **SEC. 5082L. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
 23 **TER 9.**

24           Section 901(a) of title 11, United States Code, is  
 25 amended—



1 (1) by inserting “555, 556,” after “553,”; and

2 (2) by inserting “559, 560, 561, 562” after

3 “557,”.

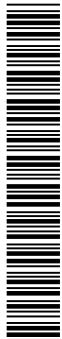
4 **SEC. 5082M. EFFECTIVE DATE; APPLICATION OF AMEND-**  
5 **MENTS.**

6 (a) EFFECTIVE DATE.—This subchapter shall take  
7 effect on the date of enactment of this Act.

8 (b) APPLICATION OF AMENDMENTS.—The amend-  
9 ments made by this subchapter shall apply with respect  
10 to cases commenced or appointments made under any  
11 Federal or State law on or after the date of enactment  
12 of this Act, but shall not apply with respect to cases com-  
13 menced or appointments made under any Federal or State  
14 law before the date of enactment of this Act.

15 **SEC. 5082N. SAVINGS CLAUSE.**

16 The meanings of terms used in this subchapter are  
17 applicable for purposes of this subchapter only, and shall  
18 not be construed or applied so as to challenge or affect  
19 the characterization, definition, or treatment of any simi-  
20 lar terms under any other statute, regulation, or rule, in-  
21 cluding the Gramm-Leach-Bliley Act, the Legal Certainty  
22 for Bank Products Act of 2000, the securities laws (as  
23 that term is defined in section 3(a)(47) of the Securities  
24 Exchange Act of 1934), and the Commodity Exchange  
25 Act.



1           **Subchapter B—Emergency Securities**  
2                                   **Response**

3   **SEC. 5086. SHORT TITLE.**

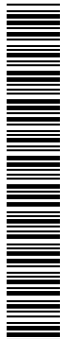
4           This subchapter may be cited as the “Emergency Se-  
5   curities Response Act of 2004”.

6   **SEC. 5087. EXTENSION OF EMERGENCY ORDER AUTHORITY**  
7                                   **OF THE SECURITIES AND EXCHANGE COM-**  
8                                   **MISSION.**

9           (a) **EXTENSION OF AUTHORITY.**—Paragraph (2) of  
10 section 12(k) of the Securities Exchange Act of 1934 (15  
11 U.S.C. 78l(k)(2)) is amended to read as follows:

12                   “(2) **EMERGENCY.**—(A) The Commission, in an  
13           emergency, may by order summarily take such ac-  
14           tion to alter, supplement, suspend, or impose re-  
15           quirements or restrictions with respect to any matter  
16           or action subject to regulation by the Commission or  
17           a self-regulatory organization under the securities  
18           laws, as the Commission determines is necessary in  
19           the public interest and for the protection of  
20           investors—

21                   “(i) to maintain or restore fair and orderly  
22           securities markets (other than markets in ex-  
23           empted securities);



1           “(ii) to ensure prompt, accurate, and safe  
2           clearance and settlement of transactions in se-  
3           curities (other than exempted securities); or

4           “(iii) to reduce, eliminate, or prevent the  
5           substantial disruption by the emergency of (I)  
6           securities markets (other than markets in ex-  
7           empted securities), investment companies, or  
8           any other significant portion or segment of such  
9           markets, or (II) the transmission or processing  
10          of securities transactions (other than trans-  
11          actions in exempted securities).

12          “(B) An order of the Commission under this  
13          paragraph (2) shall continue in effect for the period  
14          specified by the Commission, and may be extended.  
15          Except as provided in subparagraph (C), the Com-  
16          mission’s action may not continue in effect for more  
17          than 30 business days, including extensions.

18          “(C) An order of the Commission under this  
19          paragraph (2) may be extended to continue in effect  
20          for more than 30 business days if, at the time of the  
21          extension, the Commission finds that the emergency  
22          still exists and determines that the continuation of  
23          the order beyond 30 business days is necessary in  
24          the public interest and for the protection of investors  
25          to attain an objective described in clause (i), (ii), or



1 (iii) of subparagraph (A). In no event shall an order  
2 of the Commission under this paragraph (2) con-  
3 tinue in effect for more than 90 calendar days.

4 “(D) If the actions described in subparagraph  
5 (A) involve a security futures product, the Commis-  
6 sion shall consult with and consider the views of the  
7 Commodity Futures Trading Commission. In exer-  
8 cising its authority under this paragraph, the Com-  
9 mission shall not be required to comply with the pro-  
10 visions of section 553 of title 5, United States Code,  
11 or with the provisions of section 19(c) of this title.

12 “(E) Notwithstanding the exclusion of exempt-  
13 ed securities (and markets therein) from the Com-  
14 mission’s authority under subparagraph (A), the  
15 Commission may use such authority to take action  
16 to alter, supplement, suspend, or impose require-  
17 ments or restrictions with respect to clearing agen-  
18 cies for transactions in such exempted securities. In  
19 taking any action under this subparagraph, the  
20 Commission shall consult with and consider the  
21 views of the Secretary of the Treasury.”

22 (b) CONSULTATION; DEFINITION OF EMERGENCY.—  
23 Section 12(k) of the Securities Exchange Act of 1934 (15  
24 U.S.C. 78l(k)) is further amended by striking paragraph  
25 (6) and inserting the following:



1           “(6) CONSULTATION.—Prior to taking any ac-  
2           tion described in paragraph (1)(B), the Commission  
3           shall consult with and consider the views of the Sec-  
4           retary of the Treasury, Board of Governors of the  
5           Federal Reserve System, and the Commodity Fu-  
6           tures Trading Commission, unless such consultation  
7           is impracticable in light of the emergency.

8           “(7) DEFINITIONS.—

9           “(A) EMERGENCY.—For purposes of this  
10          subsection, the term ‘emergency’ means—

11                   “(i) a major market disturbance char-  
12                   acterized by or constituting—

13                           “(I) sudden and excessive fluc-  
14                           tuations of securities prices generally,  
15                           or a substantial threat thereof, that  
16                           threaten fair and orderly markets; or

17                           “(II) a substantial disruption of  
18                           the safe or efficient operation of the  
19                           national system for clearance and set-  
20                           tlement of transactions in securities,  
21                           or a substantial threat thereof; or

22                   “(ii) a major disturbance that sub-  
23                   stantially disrupts, or threatens to substan-  
24                   tially disrupt—



1                   “(I) the functioning of securities  
2                   markets, investment companies, or  
3                   any other significant portion or seg-  
4                   ment of the securities markets; or

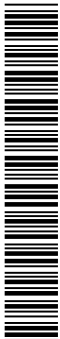
5                   “(II) the transmission or proc-  
6                   essing of securities transactions.

7                   “(B) SECURITIES LAWS.—Notwithstanding  
8                   section 3(a)(47), for purposes of this sub-  
9                   section, the term ‘securities laws’ does not in-  
10                  clude the Public Utility Holding Company Act  
11                  of 1935 (15 U.S.C. 79a et seq.).”.

12 **SEC. 5088. PARALLEL AUTHORITY OF THE SECRETARY OF**  
13                   **THE TREASURY WITH RESPECT TO GOVERN-**  
14                   **MENT SECURITIES.**

15                  Section 15C of the Securities Exchange Act of 1934  
16                  (15 U.S.C. 78o–5) is amended by adding at the end the  
17                  following new subsection:

18                  “(h) EMERGENCY AUTHORITY.—The Secretary may  
19                  by order take any action with respect to a matter or action  
20                  subject to regulation by the Secretary under this section,  
21                  or the rules of the Secretary thereunder, involving a gov-  
22                  ernment security or a market therein (or significant por-  
23                  tion or segment of that market), that the Commission may  
24                  take under section 12(k)(2) of this title with respect to  
25                  transactions in securities (other than exempted securities)





1 or a market therein (or significant portion or segment of  
2 that market).”.

3 **SEC. 5089. JOINT REPORT ON IMPLEMENTATION OF FINAN-**  
4 **CIAL SYSTEM RESILIENCE RECOMMENDA-**  
5 **TIONS.**

6 (a) REPORT REQUIRED.—Not later than April 30,  
7 2006, the Board of Governors of the Federal Reserve Sys-  
8 tem, the Comptroller of the Currency, and the Securities  
9 and Exchange Commission shall prepare and submit to  
10 the Committee on Financial Services of the House of Rep-  
11 resentatives and the Committee on Banking, Housing, and  
12 Urban Affairs of the Senate a joint report on the efforts  
13 of the private sector to implement the Interagency Paper  
14 on Sound Practices to Strengthen the Resilience of the  
15 U.S. Financial System.

16 (b) CONTENTS OF REPORT.—The report required by  
17 subsection (a) shall—

18 (1) examine the efforts to date of covered pri-  
19 vate sector financial services firms to implement en-  
20 hanced business continuity plans;

21 (2) examine the extent to which the implemen-  
22 tation of business continuity plans has been done in  
23 a geographically dispersed manner, including an  
24 analysis of the extent to which such firms have lo-  
25 cated their main and backup facilities in separate



1 electrical networks, in different watersheds, in inde-  
2 pendent transportation systems, and using separate  
3 telecommunications centers;

4 (3) examine the need to cover more financial  
5 services entities than those covered by the Inter-  
6 agency Paper; and

7 (4) recommend legislative and regulatory  
8 changes that will—

9 (A) expedite the effective implementation  
10 of the Interagency Paper by all covered finan-  
11 cial services entities; and

12 (B) maximize the effective implementation  
13 of business continuity planning by all partici-  
14 pants in the financial services industry.

15 (c) CONFIDENTIALITY.—Any information provided to  
16 the Federal Reserve Board, the Comptroller of the Cur-  
17 rency, or the Securities and Exchange Commission for the  
18 purposes of the preparation and submission of the report  
19 required by subsection (a) shall be treated as privileged  
20 and confidential. For purposes of section 552 of title 5,  
21 United States Code, this subsection shall be considered a  
22 statute described in subsection (b)(3)(B) of such section  
23 552.

24 (d) DEFINITION.—The Interagency Paper on Sound  
25 Practices to Strengthen the Resilience of the U.S. Finan-



1 cial System is the interagency paper prepared by the  
2 Board of Governors of the Federal Reserve System, the  
3 Comptroller of the Currency, and the Securities and Ex-  
4 change Commission that was announced in the Federal  
5 Register on April 8, 2003.

6 **SEC. 5089A. PRIVATE SECTOR PREPAREDNESS.**

7 It is the sense of the Congress that the insurance in-  
8 dustry and credit-rating agencies, where relevant, should  
9 carefully consider a company's compliance with standards  
10 for private sector disaster and emergency preparedness in  
11 assessing insurability and creditworthiness, to ensure that  
12 private sector investment in disaster and emergency pre-  
13 paredness is appropriately encouraged.

14 **SEC. 5089B. REPORT ON PUBLIC/PRIVATE PARTNERSHIPS.**

15 Before the end of the 6-month period beginning on  
16 the date of the enactment of this Act, the Secretary of  
17 the Treasury shall submit a report to the Committee on  
18 Financial Services of the House of Representatives and  
19 the Committee on Banking, Housing, and Urban Affairs  
20 of the Senate containing—

21 (1) information on the efforts the Department  
22 of the Treasury has made to encourage the forma-  
23 tion of public/private partnerships to protect critical  
24 financial infrastructure and the type of support that



1 the Department has provided to these partnerships;  
2 and

3 (2) recommendations for administrative or leg-  
4 islative action regarding these partnerships as the  
5 Secretary may determine to be appropriate.

6 **Subtitle H—Other Matters**

【Subtitle H of title V of the Amendment  
in the Nature of a Substitute consists of sub-  
title H of title V of the bill H.R. 10, as intro-  
duced on September 24, 2004】

