

**GRAMM-LEACH-BLILEY ACT**

[As Amended Through P.L. 114-94, Enacted December 4, 2015]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.<sup>1</sup>**

(a) [12 U.S.C. 1811 nt] **SHORT TITLE.**—This Act may be cited as the “Gramm-Leach-Bliley Act”.

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**TITLE I—FACILITATING AFFILIATION  
AMONG BANKS, SECURITIES FIRMS,  
AND INSURANCE COMPANIES**

**Subtitle A—Affiliations**

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**SEC. 103. FINANCIAL ACTIVITIES.**

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(d) [12 U.S.C. 1843 nt] **REPORT.**—

(1) **IN GENERAL.**—By the end of the 4-year period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (k)(1) or (n) of section 4 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

(2) **OTHER CONTENTS.**—The report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies that are incidental to activities that are financial in nature or complementary to such financial activities.

<sup>1</sup>Note: The Gramm-Leach-Bliley Act largely amended other Acts. Many free-standing provisions of such Act, while still effect, do not have a permanent or long-term application and have therefore not been included in this compilation.

(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

(C) An analysis and discussion of the effect of mergers and acquisitions under section 4(k) of the Bank Holding Company Act of 1956 on market concentration in the financial services industry.

**SEC. 104. [15 U.S.C. 6701] OPERATION OF STATE LAW.**

(a) STATE REGULATION OF THE BUSINESS OF INSURANCE.—The Act entitled “An Act to express the intent of Congress with reference to the regulation of the business of insurance” and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the “McCarran-Ferguson Act”) remains the law of the United States.

(b) MANDATORY INSURANCE LICENSING REQUIREMENTS.—No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

(c) AFFILIATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) INSURANCE.—With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

(A) any State from—

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State; during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of pre-

paring and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

(B) CERTAIN STATE LAWS PRESERVED.—Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institu-

tion, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term “services as an insurance agent or broker” does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) LIMITATIONS.—

(i) OCC DEFERENCE.—Section 304(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) INSURANCE ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations, orders, and other actions

shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled “An Act to express the intent of Congress with reference to the regulation of the business of insurance” and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the “McCarran-Ferguson Act”);

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e).

(4) FINANCIAL ACTIVITIES OTHER THAN INSURANCE.—No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) **NONDISCRIMINATION.**—Except as provided in any restrictions described in subsection (d)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) **LIMITATION.**—Subsections (c) and (d) shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 203A of the Investment Advisers Act of 1940), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 203A); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.



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

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

(2) ANTITRUST LAWS.—The term “antitrust laws” has the meaning given the term in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act (to the extent that such section 5 relates to unfair methods of competition).

(3) DEPOSITORY INSTITUTION.—The term “depository institution”—

(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) INSURER.—The term “insurer” means any person engaged in the business of insurance.

(5) STATE.—The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

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**SEC. 108. [12 U.S.C. 4801 nt] USE OF SUBORDINATED DEBT TO PROTECT FINANCIAL SYSTEM AND DEPOSIT FUNDS FROM “TOO BIG TO FAIL” INSTITUTIONS.**

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall conduct a study of—

(1) the feasibility and appropriateness of establishing a requirement that, with respect to large insured depository institutions and depository institution holding companies the failure of which could have serious adverse effects on economic conditions or financial stability, such institutions and holding companies maintain some portion of their capital in the form of subordinated debt in order to bring market forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and reduce the risk to economic conditions, financial stability, and any deposit insurance fund;

(2) if such requirement is feasible and appropriate, the appropriate amount or percentage of capital that should be subordinated debt consistent with such purposes; and

(3) the manner in which any such requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a report to the Congress containing the findings and conclusions of the Board and the Secretary in connection with the

study required under subsection (a), together with such legislative and administrative proposals as the Board and the Secretary may determine to be appropriate.

(c) DEFINITIONS.—For purposes of subsection (a), the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term “bank holding company” has the meaning given the term in section 2 of the Bank Holding Company Act of 1956.

(2) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(3) SUBORDINATED DEBT.—The term “subordinated debt” means unsecured debt that—

(A) has an original weighted average maturity of not less than 5 years;

(B) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits;

(C) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(D) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company.

**SEC. 109. [12 U.S.C. 252 nt] STUDY OF FINANCIAL MODERNIZATION'S EFFECT ON THE ACCESSIBILITY OF SMALL BUSINESS AND FARM LOANS.**

(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), shall conduct a study of the extent to which credit is being provided to and for small businesses and farms, as a result of this Act and the amendments made by this Act.

(b) REPORT.—Before the end of the 5-year period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Federal banking agencies, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action.

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## **Subtitle B—Streamlining Supervision of Bank Holding Companies**

**SEC. 114. [12 U.S.C. 1828a] PRUDENTIAL SAFEGUARDS.**

(a) COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) consistent with the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) REVIEW.—The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Comptroller finds is no longer required for such purposes.

(b) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank;

if the Board makes a finding described in paragraph (2) with respect to such restriction or requirement.

(2) FINDING.—The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies or State member banks, as the case may be; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) REVIEW.—The Board of Governors of the Federal Reserve System shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) or (4) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (2)(B) or (4)(B); and

(B) modify or eliminate any such restriction or requirement the Board finds is no longer required for such purposes.

(4) FOREIGN BANKS.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank that the Corporation finds are—

(A) consistent with the purposes of this Act, the Federal Deposit Insurance Act, or other Federal law applicable to State nonmember banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) REVIEW.—The Federal Deposit Insurance Corporation shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Corporation finds is no longer required for such purposes.

**SEC. 115. [12 U.S.C. 1820a] EXAMINATION OF INVESTMENT COMPANIES.**

(a) EXCLUSIVE COMMISSION AUTHORITY.—Except as provided in subsection (c), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(b) **EXAMINATION RESULTS AND OTHER INFORMATION.**—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) **CERTAIN EXAMINATIONS AUTHORIZED.**—Nothing in this section shall prevent the Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the insured depository institution and the affiliate, and the effect of such relationship on the insured depository institution.

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

(1) **BANK HOLDING COMPANY.**—The term “bank holding company” has the meaning given the term in section 2 of the Bank Holding Company Act of 1956.

(2) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

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

(4) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” has the meaning given the term in section 3(z) of the Federal Deposit Insurance Act.

(5) **INSURED DEPOSITORY INSTITUTION.**—The term “insured depository institution” has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(6) **REGISTERED INVESTMENT COMPANY.**—The term “registered investment company” means an investment company that is registered with the Commission under the Investment Company Act of 1940.

(7) **SAVINGS AND LOAN HOLDING COMPANY.**—The term “savings and loan holding company” has the meaning given the term in section 10(a)(1)(D) of the Home Owners’ Loan Act.

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## Subtitle C—Subsidiaries of National Banks

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### SEC. 122. [12 U.S.C. 1843 nt] CONSIDERATION OF MERCHANT BANKING ACTIVITIES BY FINANCIAL SUBSIDIARIES.

After the end of the 5-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury may, if appropriate, after considering—

(1) the experience with the effects of financial modernization under this Act and merchant banking activities of financial holding companies;

(2) the potential effects on depository institutions and the financial system of allowing merchant banking activities in financial subsidiaries; and

(3) other relevant facts;  
jointly adopt rules that permit financial subsidiaries to engage in merchant banking activities described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956, under such terms and conditions as the Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly determine to be appropriate.

## Subtitle D—Preservation of FTC Authority

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### SEC. 132. [12 U.S.C. 1828b] INTERAGENCY DATA SHARING.

(a) **IN GENERAL.**—To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3 or 4 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

(b) **CONFIDENTIALITY REQUIREMENTS.**—

(1) **IN GENERAL.**—Any information or material obtained by any agency pursuant to subsection (a) shall be treated as confidential.

(2) **PROCEDURES FOR DISCLOSURE.**—If any information or material obtained by any agency pursuant to subsection (a) is proposed to be disclosed to a third party, written notice of such disclosure shall first be provided to the agency from which such information or material was obtained and an opportunity shall be given to such agency to oppose or limit the proposed disclosure.

(3) **OTHER PRIVILEGES NOT WAIVED BY DISCLOSURE UNDER THIS SECTION.**—The provision by any Federal agency of any information or material pursuant to subsection (a) to another agency shall not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under Federal or State law.

(4) **EXCEPTION.**—No provision of this section shall be construed as preventing or limiting access to any information by any duly authorized committee of the Congress or the Comptroller General of the United States.

(c) **BANKING AGENCY INFORMATION SHARING.**—The provisions of subsection (b) shall apply to—

(1) any information or material obtained by any Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) from any other Federal banking agency; and

(2) any report of examination or other confidential supervisory information obtained by any State agency or authority, or any other person, from a Federal banking agency.

**SEC. 133. [15 U.S.C. 41 nt] CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.**

(a) **CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.**—Any person that directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of any provisions applied by the Federal Trade Commission under the Federal Trade Commission Act.

(b) **SAVINGS PROVISION.**—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

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## TITLE II—FUNCTIONAL REGULATION

### Subtitle A—Brokers and Dealers

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**SEC. 206. [15 U.S.C. 78c] DEFINITION OF IDENTIFIED BANKING PRODUCT.**

(a) **DEFINITION OF IDENTIFIED BANKING PRODUCT.**—Except as provided in subsection (e), for purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5)), the term “identified banking product” means—

(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(2) a banker’s acceptance;

(3) a letter of credit issued or loan made by a bank;

(4) a debit account at a bank arising from a credit card or similar arrangement;

(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(A) to qualified investors; or

(B) to other persons that—

(i) have the opportunity to review and assess any material information, including information regarding the borrower’s creditworthiness; and

(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

(6) any swap agreement, including credit and equity swaps, except that an equity swap that is sold directly to any person other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934) shall not be treated as an identified banking product.

(b) **DEFINITION OF SWAP AGREEMENT.**—For purposes of subsection (a)(6), the term “swap agreement” means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include any other identified banking product, as defined in paragraphs (1) through (5) of subsection (a).

(c) **CLASSIFICATION LIMITED.**—Classification of a particular product as an identified banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(d) **INCORPORATED DEFINITIONS.**—For purposes of this section, the terms “bank” and “qualified investor” have the same meanings as given in section 3(a) of the Securities Exchange Act of 1934, as amended by this Act.

**SEC. 206A. [15 U.S.C. 78c nt] SWAP AGREEMENT.**

(a) **IN GENERAL.**—Except as provided in subsection (b), as used in this section, the term “swap agreement” means any agreement, contract, or transaction that—

(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap,



basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

(b) EXCLUSIONS.—The term “swap agreement” does not include—

(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

(2) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 relating to foreign currency;

(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934; or

(6) any agreement, contract, or transaction that is—

(A) based on a security; and

(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

(c) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—As used in this section, the term “swap agreement” shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement, contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b).

【Sections 206B and 206C are repealed. See section 762(a) of Public Law 111–203】

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## Subtitle D—Banks and Bank Holding Companies

### SEC. 241. [15 U.S.C. 78m nt] CONSULTATION.

(a) **IN GENERAL.**—The Securities and Exchange Commission shall consult and coordinate comments with the appropriate Federal banking agency before taking any action or rendering any opinion with respect to the manner in which any insured depository institution or depository institution holding company reports loan loss reserves in its financial statement, including the amount of any such loan loss reserve.

(b) **DEFINITIONS.**—For purposes of subsection (a), the terms “insured depository institution”, “depository institution holding company”, and “appropriate Federal banking agency” have the same meaning as given in section 3 of the Federal Deposit Insurance Act.

## TITLE III—INSURANCE<sup>2</sup>

### Subtitle A—State Regulation of Insurance

#### SEC. 301. [15 U.S.C. 6711] FUNCTIONAL REGULATION OF INSURANCE.

The insurance activities of any person (including a national bank exercising its power to act as agent under the eleventh undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

#### SEC. 302. [15 U.S.C. 6712] INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) **IN GENERAL.**—Except as provided in section 303, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) **AUTHORIZED PRODUCTS.**—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) **DEFINITION.**—For purposes of this section, the term “insurance” means—

<sup>2</sup>Subtitles B and D of this title are not included here. Subtitle B of such title relates to Redomestication of Mutual Insurers and subtitle D relates to Rental Car Agency Insurance Activities.

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(d) **RULE OF CONSTRUCTION.**—For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

**SEC. 303. [15 U.S.C. 6713] TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.**

(a) **GENERAL PROHIBITION.**—No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) NONDISCRIMINATION PARITY EXCEPTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) COORDINATION WITH “WILDCARD” PROVISION.—A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) GRANDFATHERING WITH CONSISTENT REGULATION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before the date of the enactment of this Act.

(2) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—For purposes of this section, the terms “affiliate” and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(e) RULE OF CONSTRUCTION.—No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

**SEC. 304. [15 U.S.C. 6714] EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.**

(a) FILING IN COURT OF APPEALS.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) EXPEDITED REVIEW.—The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) STATUTE OF LIMITATION.—No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) STANDARD OF REVIEW.—The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

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**SEC. 306. [15 U.S.C. 6715] CERTAIN STATE AFFILIATION LAWS PRE-EMPTED FOR INSURANCE COMPANIES AND AFFILIATES.**

Except as provided in section 104(c)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

**SEC. 307. [15 U.S.C. 6716] INTERAGENCY CONSULTATION.**

(a) PURPOSE.—It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance

regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) PRIVILEGE.—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

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

(1) APPROPRIATE FEDERAL BANKING AGENCY; DEPOSITORY INSTITUTION.—The terms “appropriate Federal banking agency” and “depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) BOARD AND FINANCIAL HOLDING COMPANY.—The terms “Board” and “financial holding company” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

**SEC. 308. [15 U.S.C. 6717] DEFINITION OF STATE.**

For purposes of this subtitle, the term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

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## Subtitle C—National Association of Registered Agents and Brokers

### SEC. 321. [15 U.S.C. 6751] NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (referred to in this subtitle as the “Association”).

(b) STATUS.—The Association shall—

- (1) be a nonprofit corporation;
- (2) not be an agent or instrumentality of the Federal Government;
- (3) be an independent organization that may not be merged with or into any other private or public entity; and
- (4) except as otherwise provided in this subtitle, be subject to, and have all the powers conferred upon, a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–301.01 et seq.) or any successor thereto.

### SEC. 322. [15 U.S.C. 6752] PURPOSE.

The purpose of the Association shall be to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State, pertaining to—

- (1) licensing, continuing education, and other qualification requirements of insurance producers that are not members of the Association;
- (2) resident or nonresident insurance producer appointment requirements;
- (3) supervising and disciplining resident and nonresident insurance producers;
- (4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and
- (5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

### SEC. 323. [15 U.S.C. 6753] MEMBERSHIP.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

- (A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which



the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

(4) CRIMINAL HISTORY RECORD CHECK REQUIRED.—

(A) IN GENERAL.—An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

(B) CRIMINAL HISTORY RECORD CHECK REQUESTED BY HOME STATE.—An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

(C) CRIMINAL HISTORY RECORD CHECK REQUESTED BY ASSOCIATION.—

(i) IN GENERAL.—The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

(ii) PROCEDURES.—The board of directors of the Association (referred to in this subtitle as the “Board”) shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant to subparagraph (I).

(D) FORM OF REQUEST.—A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

(E) PROVISION OF INFORMATION BY ATTORNEY GENERAL.—Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau

of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

(F) LIMITATION ON PERMISSIBLE USES OF INFORMATION.—Any information provided to the Association under subparagraph (E) may only—

(i) be used for purposes of determining compliance with membership criteria established by the Association;

(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

(G) PENALTY FOR IMPROPER USE OR DISCLOSURE.—Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than \$50,000 per violation as determined by a court of competent jurisdiction.

(H) RELIANCE ON INFORMATION.—Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

(I) FEES.—The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

(J) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

(i) requiring a State insurance regulator to perform criminal history record checks under this section; or

(ii) limiting any other authority that allows access to criminal history records.

(K) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

(ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of

information regarding the insurance producer provided under subparagraph (E).

(L) INELIGIBILITY FOR MEMBERSHIP.—

(i) IN GENERAL.—The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E), or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

(ii) RIGHTS OF APPLICANTS DENIED MEMBERSHIP.—The Association shall notify any insurance producer who is denied membership on the basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to—

(I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and

(II) challenge the denial of membership based on the accuracy and completeness of the information.

(M) DEFINITION.—For purposes of this paragraph, the term “criminal history record check” means a national background check of criminal history records of the Federal Bureau of Investigation.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES OF MEMBERSHIP.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

(2) BUSINESS ENTITIES.—The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

(3) CATEGORIES.—

(A) SEPARATE CATEGORIES FOR INSURANCE PRODUCERS PERMITTED.—The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

(B) SEPARATE TREATMENT FOR DEPOSITORY INSTITUTIONS PROHIBITED.—No special categories of membership, and no distinct membership criteria, shall be established

for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

(2) QUALIFICATIONS.—In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subtitle as the “NAIC”) Producer Licensing Model Act in effect as of the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2015, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(3) ASSISTANCE FROM STATES.—

(A) IN GENERAL.—The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

(B) AUTHORIZATION OF INFORMATION SHARING.—A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

(i) the State to share information with the Association; and

(ii) the Association to receive the information.

(C) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

(4) DENIAL OF MEMBERSHIP.—The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

(e) EFFECT OF MEMBERSHIP.—

(1) AUTHORITY OF ASSOCIATION MEMBERS.—Membership in the Association shall—

(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

(2) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—Nothing in this subtitle shall be construed to alter, modify, or supercede any requirement established by section 1033 of title 18, United States Code.

(3) AGENT FOR REMITTING FEES.—The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

(4) NOTIFICATION OF ACTION.—

(A) IN GENERAL.—The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

(B) ONGOING DISCLOSURES REQUIRED.—On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The Association shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

(5) PRESERVATION OF CONSUMER PROTECTION AND MARKET CONDUCT REGULATION.—

(A) IN GENERAL.—No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subtitle related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

(B) PRESERVED REGULATIONS.—The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

- (i) regulate market conduct, insurance producer conduct, or unfair trade practices;
  - (ii) establish consumer protections; or
  - (iii) require insurance producers to be appointed by a licensed or authorized insurer.
- (f) BIENNIAL RENEWAL.—Membership in the Association shall be renewed on a biennial basis.
- (g) CONTINUING EDUCATION.—
- (1) IN GENERAL.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the continuing education requirements under the licensing laws of a majority of the States.
  - (2) STATE CONTINUING EDUCATION REQUIREMENTS.—A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.
  - (3) RECIPROCITY.—The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.
  - (4) LIMITATION ON THE ASSOCIATION.—The Association shall not directly or indirectly offer any continuing education courses for insurance producers.
- (h) PROBATION, SUSPENSION AND REVOCATION.—
- (1) DISCIPLINARY ACTION.—The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if—
    - (A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;
    - (B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;
    - (C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or
    - (D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the Association has received a copy of the final disposition from a court of competent jurisdiction.
  - (2) VIOLATIONS OF ASSOCIATION STANDARDS.—The Association shall have the power to investigate alleged violations of Association standards.
  - (3) REPORTING.—The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

## (i) CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall—

(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regulator where the consumer resides and, when appropriate, to any additional State insurance regulator, as determined by standards adopted by the Association; and

(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

(2) TELEPHONE AND OTHER ACCESS.—The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

(3) FINAL DISPOSITION OF INVESTIGATION.—State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

## (j) INFORMATION SHARING.—The Association may—

(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

(2) limit the sharing of information as required under this subtitle with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subtitle;

(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

(k) EFFECTIVE DATE.—The provisions of this section shall take effect on the later of—

(1) the expiration of the 2-year period beginning on the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2015; and

(2) the date of incorporation of the Association.

**SEC. 324. [15 U.S.C. 6754] BOARD OF DIRECTORS.**

(a) **ESTABLISHMENT.**—There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

(b) **POWERS.**—The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.

(c) **COMPOSITION.**—

(1) **IN GENERAL.**—The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, of whom—

(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

(2) **STATE INSURANCE REGULATOR REPRESENTATIVES.**—

(A) **RECOMMENDATIONS.**—Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

(B) **POLITICAL AFFILIATION.**—Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

(C) **FORMER STATE INSURANCE COMMISSIONERS.**—

(i) **IN GENERAL.**—If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

(ii) **LIMITATION.**—A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.



- (D) SERVICE THROUGH TERM.—If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.
- (3) PRIVATE SECTOR REPRESENTATIVES.—In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.
- (4) STATE INSURANCE COMMISSIONER DEFINED.—For purposes of this subsection, the term “State insurance commissioner” means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.
- (d) TERMS.—
- (1) IN GENERAL.—Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.
- (2) EXCEPTIONS.—
- (A) 1-YEAR TERMS.—The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for—
- (i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A), of whom not more than 2 shall belong to the same political party;
- (ii) 1 of the Board members initially appointed under paragraph (1)(B); and
- (iii) 1 of the Board members initially appointed under paragraph (1)(C).
- (B) EXPIRATION OF TERM.—A Board member may continue to serve after the expiration of the term to which the Board member was appointed for the earlier of 2 years or until a successor is appointed.
- (C) MID-TERM APPOINTMENTS.—A Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the Board member was appointed shall be appointed only for the remainder of that term.
- (3) SUCCESSIVE TERMS.—Board members may be reappointed to successive terms.
- (e) INITIAL APPOINTMENTS.—The appointment of initial Board members shall be made no later than 90 days after the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2015.
- (f) MEETINGS.—
- (1) IN GENERAL.—The Board shall meet—
- (A) at the call of the chairperson;
- (B) as requested in writing to the chairperson by not fewer than 5 Board members; or
- (C) as otherwise provided by the bylaws of the Association.
- (2) QUORUM REQUIRED.—A majority of all Board members shall constitute a quorum.

(3) VOTING.—Decisions of the Board shall require the approval of a majority of all Board members present at a meeting, a quorum being present.

(4) INITIAL MEETING.—The Board shall hold its first meeting not later than 45 days after the date on which all initial Board members have been appointed.

(g) RESTRICTION ON CONFIDENTIAL INFORMATION.—Board members appointed pursuant to subparagraphs (B) and (C) of subsection (c)(1) shall not have access to confidential information received by the Association in connection with complaints, investigations, or disciplinary proceedings involving insurance producers.

(h) ETHICS AND CONFLICTS OF INTEREST.—The Board shall issue and enforce an ethical conduct code to address permissible and prohibited activities of Board members and Association officers, employees, agents, or consultants. The code shall, at a minimum, include provisions that prohibit any Board member or Association officer, employee, agent or consultant from—

(1) engaging in unethical conduct in the course of performing Association duties;

(2) participating in the making or influencing the making of any Association decision, the outcome of which the Board member, officer, employee, agent, or consultant knows or had reason to know would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the person or a member of the immediate family of the person;

(3) accepting any gift from any person or entity other than the Association that is given because of the position held by the person in the Association;

(4) making political contributions to any person or entity on behalf of the Association; and

(5) lobbying or paying a person to lobby on behalf of the Association.

(i) COMPENSATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), no Board member may receive any compensation from the Association or any other person or entity on account of Board membership.

(2) TRAVEL EXPENSES AND PER DIEM.—Board members may be reimbursed only by the Association for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from home or regular places of business in performance of services for the Association.

**SEC. 325. [15 U.S.C. 6755] BYLAWS, STANDARDS, AND DISCIPLINARY ACTIONS.**

(a) ADOPTION AND AMENDMENT OF BYLAWS AND STANDARDS.—

(1) PROCEDURES.—The Association shall adopt procedures for the adoption of bylaws and standards that are similar to procedures under subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(2) COPY REQUIRED TO BE FILED.—The Board shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, all proposed bylaws and standards of the Association, or any proposed amendment to the bylaws or standards of the Association, accompanied by a concise general statement of the basis and purpose of such proposal.

(3) EFFECTIVE DATE.—Any proposed bylaw or standard of the Association, and any proposed amendment to the bylaws or standards of the Association, shall take effect, after notice under paragraph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 329(c).

(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to subject the Board or the Association to the requirements of subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation (referred to in this section as a “disciplinary action”) or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which the member has been found to have been engaged;

(B) the specific provision of this subtitle or standard of the Association that any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for the sanction.

(3) INELIGIBILITY OF PRIVATE SECTOR REPRESENTATIVES.—Board members appointed pursuant to section 324(c)(3) may not—

(A) participate in any disciplinary action or be counted toward establishing a quorum during a disciplinary action; and

(B) have access to confidential information concerning any disciplinary action.

**SEC. 326. [15 U.S.C. 6756] POWERS.**

In addition to all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, the Association shall have the power to—

(1) establish and collect such membership fees as the Association finds necessary to impose to cover the costs of its operations;

(2) adopt, amend, and repeal bylaws, procedures, or standards governing the conduct of Association business and performance of its duties;

(3) establish procedures for providing notice and opportunity for comment pursuant to section 325(a);

(4) enter into and perform such agreements as necessary to carry out the duties of the Association;

(5) hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this subtitle, and determine their qualification;

(6) establish personnel policies of the Association and programs relating to, among other things, conflicts of interest, rates of compensation, where applicable, and qualifications of personnel;

(7) borrow money; and

(8) secure funding for such amounts as the Association determines to be necessary and appropriate to organize and begin operations of the Association, which shall be treated as loans to be repaid by the Association with interest at market rate.

**SEC. 327. [15 U.S.C. 6757] REPORT BY THE ASSOCIATION.**

(a) **IN GENERAL.**—As soon as practicable after the close of each fiscal year, the Association shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year.

(b) **FINANCIAL STATEMENTS.**—Each report submitted under subsection (a) with respect to any fiscal year shall include audited financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

**SEC. 328. [15 U.S.C. 6758] LIABILITY OF THE ASSOCIATION AND THE BOARD MEMBERS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.**

(a) **IN GENERAL.**—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) **LIABILITY OF BOARD MEMBERS, OFFICERS, AND EMPLOYEES.**—No Board member, officer, or employee of the Association shall be personally liable to any person for any action taken or omitted in good faith in any matter within the scope of their responsibilities in connection with the Association.

**SEC. 329. [15 U.S.C. 6759] PRESIDENTIAL OVERSIGHT.**

(a) **REMOVAL OF BOARD.**—If the President determines that the Association is acting in a manner contrary to the interests of the public or the purposes of this subtitle or has failed to perform its

duties under this subtitle, the President may remove the entire existing Board for the remainder of the term to which the Board members were appointed and appoint, in accordance with section 324 and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, new Board members to fill the vacancies on the Board for the remainder of the terms.

(b) REMOVAL OF BOARD MEMBER.—The President may remove a Board member only for neglect of duty or malfeasance in office.

(c) SUSPENSION OF BYLAWS AND STANDARDS AND PROHIBITION OF ACTIONS.—Following notice to the Board, the President, or a person designated by the President for such purpose, may suspend the effectiveness of any bylaw or standard, or prohibit any action, of the Association that the President or the designee determines is contrary to the purposes of this subtitle.

**SEC. 330. [15 U.S.C. 6760] RELATIONSHIP TO STATE LAW.**

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted to the extent provided in subsection (b).

(b) PROHIBITED ACTIONS.—

(1) IN GENERAL.—No State shall—

(A) impede the activities of, take any action against, or apply any provision of law or regulation arbitrarily or discriminatorily to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(B) impose any requirement upon a member of the Association that it pay fees different from those required to be paid to that State were it not a member of the Association; or

(C) impose any continuing education requirements on any nonresident insurance producer that is a member of the Association.

(2) STATES OTHER THAN A HOME STATE.—No State, other than the home State of a member of the Association, shall—

(A) impose any licensing, personal or corporate qualifications, education, training, experience, residency, continuing education, or bonding requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership;

(B) impose any requirement upon a member of the Association that it be licensed, registered, or otherwise qualified to do business or remain in good standing in the State, including any requirement that the insurance producer register as a foreign company with the secretary of state or equivalent State official;

(C) require that a member of the Association submit to a criminal history record check as a condition of doing business in the State; or

(D) impose any licensing, registration, or appointment requirements upon a member of the Association, or require a member of the Association to be authorized to operate as

an insurance producer, in order to sell, solicit, or negotiate insurance for commercial property and casualty risks to an insured with risks located in more than one State, if the member is licensed or otherwise authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State.

(3) **PRESERVATION OF STATE DISCIPLINARY AUTHORITY.**—Nothing in this section may be construed to prohibit a State from investigating and taking appropriate disciplinary action, including suspension or revocation of authority of an insurance producer to do business in a State, in accordance with State law and that is not inconsistent with the provisions of this section, against a member of the Association as a result of a complaint or for any alleged activity, regardless of whether the activity occurred before or after the insurance producer commenced doing business in the State pursuant to Association membership.

**SEC. 331. [15 U.S.C. 6761] COORDINATION WITH FINANCIAL INDUSTRY REGULATORY AUTHORITY.**

The Association shall coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of the Association that are subject to regulation by the Financial Industry Regulatory Authority, consistent with the requirements of this subtitle and the Federal securities laws.

**SEC. 332. [15 U.S.C. 6762] RIGHT OF ACTION.**

(a) **RIGHT OF ACTION.**—Any person aggrieved by a decision or action of the Association may, after reasonably exhausting available avenues for resolution within the Association, commence a civil action in an appropriate United States district court, and obtain all appropriate relief.

(b) **ASSOCIATION INTERPRETATIONS.**—In any action under subsection (a), the court shall give appropriate weight to the interpretation of the Association of its bylaws and standards and this subtitle.

**SEC. 333. [15 U.S.C. 6763] FEDERAL FUNDING PROHIBITED.**

The Association may not receive, accept, or borrow any amounts from the Federal Government to pay for, or reimburse, the Association for, the costs of establishing or operating the Association.

**SEC. 334. [15 U.S.C. 6764] DEFINITIONS.**

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

(1) **BUSINESS ENTITY.**—The term “business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(2) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) **HOME STATE.**—The term “home State” means the State in which the insurance producer maintains its principal place

of residence or business and is licensed to act as an insurance producer.

(4) INSURANCE.—The term “insurance” means any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(5) INSURANCE PRODUCER.—The term “insurance producer” means any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) INSURER.—The term “insurer” has the meaning as in section 313(e)(2)(B) of title 31, United States Code.

(7) PRINCIPAL PLACE OF BUSINESS.—The term “principal place of business” means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) PRINCIPAL PLACE OF RESIDENCE.—The term “principal place of residence” means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) STATE.—The term “State” includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(10) STATE LAW.—

(A) IN GENERAL.—The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) LAWS APPLICABLE IN THE DISTRICT OF COLUMBIA.—A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

## TITLE V—PRIVACY

### Subtitle A—Disclosure of Nonpublic Personal Information

#### SEC. 501. [15 U.S.C. 6801] PROTECTION OF NONPUBLIC PERSONAL INFORMATION.

(a) PRIVACY OBLIGATION POLICY.—It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers’ non-public personal information.

(b) FINANCIAL INSTITUTIONS SAFEGUARDS.—In furtherance of the policy in subsection (a), each agency or authority described in

section 505(a), other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

**SEC. 502. [15 U.S.C. 6802] OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION.**

(a) **NOTICE REQUIREMENTS.**—Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503.

(b) **OPT OUT.**—

(1) **IN GENERAL.**—A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) **EXCEPTION.**—This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) **LIMITS ON REUSE OF INFORMATION.**—Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.



(d) LIMITATIONS ON THE SHARING OF ACCOUNT NUMBER INFORMATION FOR MARKETING PURPOSES.—A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) GENERAL EXCEPTIONS.—Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including the Bureau of Consumer Financial Protection a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

**SEC. 503. [15 U.S.C. 6803] DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

(a) **DISCLOSURE REQUIRED.**—At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) **REGULATIONS.**—Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 504.

(c) **INFORMATION TO BE INCLUDED.**—The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

(d) **EXEMPTION FOR CERTIFIED PUBLIC ACCOUNTANTS.**—

(1) **IN GENERAL.**—The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) LIMITATION.—Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) DEFINITIONS.—For purposes of this subsection, the term “State” means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) MODEL FORMS.—

(1) IN GENERAL.—The agencies referred to in section 504(a)(1) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) FORMAT.—A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) TIMING.—A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after the date of enactment of this subsection.

(4) SAFE HARBOR.—Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) EXCEPTION TO ANNUAL NOTICE REQUIREMENT.—A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

**SEC. 504. [15 U.S.C. 6804] RULEMAKING.**

(a) REGULATORY AUTHORITY.—

(1) RULEMAKING.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to their respective jurisdiction under section 505 (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 501.

(B) CFTC.—The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 5g of the Commodity Exchange Act.

(C) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010.

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subtitle.

(2) COORDINATION, CONSISTENCY, AND COMPARABILITY.—Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) PROCEDURES AND DEADLINE.—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code.

(b) AUTHORITY TO GRANT EXCEPTIONS.—The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 502 as are deemed consistent with the purposes of this subtitle.

**SEC. 505. [15 U.S.C. 6805] ENFORCEMENT.**

(a) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with re-

spect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act, by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940, by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940, by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of this Act.

(7) Under the Federal Trade Commission Act, by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection,

in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subtitle, but not with respect to the standards under section 501.

(b) ENFORCEMENT OF SECTION 501.—

(1) IN GENERAL.—Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 501(b) in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the Federal Deposit Insurance Act are implemented pursuant to such section.

(2) EXCEPTION.—The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 501(b) by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) ABSENCE OF STATE ACTION.—If a State insurance authority fails to adopt regulations to carry out this subtitle, such State shall not be eligible to override, pursuant to section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a Federal banking agency under section 47(a) of such Act.

(d) DEFINITIONS.—The terms used in subsection (a)(1) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the same meaning as given in section 1(b) of the International Banking Act of 1978.

\* \* \* \* \*

**SEC. 507. [15 U.S.C. 6807] RELATION TO STATE LAWS.**

(a) IN GENERAL.—This subtitle and the amendments made by this subtitle shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle and the amendments made by this subtitle, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

**SEC. 508. [15 U.S.C. 6808] STUDY OF INFORMATION SHARING AMONG FINANCIAL AFFILIATES.**

(a) IN GENERAL.—The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) **CONSULTATION.**—The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) **REPORT.**—On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

**SEC. 509. [15 U.S.C. 6809] DEFINITIONS.**

As used in this subtitle:

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

(2) **FEDERAL FUNCTIONAL REGULATOR.**—The term “Federal functional regulator” means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

and (F) the Securities and Exchange Commission.

(3) **FINANCIAL INSTITUTION.**—

(A) **IN GENERAL.**—The term “financial institution” means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956.

(B) **PERSONS SUBJECT TO CFTC REGULATION.**—Notwithstanding subparagraph (A), the term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(C) **FARM CREDIT INSTITUTIONS.**—Notwithstanding subparagraph (A), the term “financial institution” does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

(D) **OTHER SECONDARY MARKET INSTITUTIONS.**—Notwithstanding subparagraph (A), the term “financial institution” does not include institutions chartered by Congress specifically to engage in transactions described in section 502(e)(1)(C), as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) **NONPUBLIC PERSONAL INFORMATION.**—

(A) The term “nonpublic personal information” means personally identifiable financial information—

- (i) provided by a consumer to a financial institution;
- (ii) resulting from any transaction with the consumer or any service performed for the consumer; or
- (iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 504.

(C) Notwithstanding subparagraph (B), such term—

- (i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but
- (ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) **NONAFFILIATED THIRD PARTY.**—The term “nonaffiliated third party” means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) **AFFILIATE.**—The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

(7) **NECESSARY TO EFFECT, ADMINISTER, OR ENFORCE.**—The term “as necessary to effect, administer, or enforce the transaction” means—

- (A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction



is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) STATE INSURANCE AUTHORITY.—The term “State insurance authority” means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) CONSUMER.—The term “consumer” means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) JOINT AGREEMENT.—The term “joint agreement” means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 504.

(11) CUSTOMER RELATIONSHIP.—The term “time of establishing a customer relationship” shall be defined by the regulations prescribed under section 504, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

**SEC. 510. [15 U.S.C. 6801 nt] EFFECTIVE DATE.**

This subtitle shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3), except—

(1) to the extent that a later date is specified in the rules prescribed under section 504; and

(2) that sections 504 and 506 shall be effective upon enactment.

## **Subtitle B—Fraudulent Access to Financial Information**

**SEC. 521. [15 U.S.C. 6821] PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**

(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this subtitle to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) **NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.**—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) **NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

(g) **NONAPPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS.**—No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

**SEC. 522. [15 U.S.C. 6822] ADMINISTRATIVE ENFORCEMENT.**

(a) **ENFORCEMENT BY FEDERAL TRADE COMMISSION.**—Except as provided in subsection (b), compliance with this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act to enforce compliance with such Act.

(b) **ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.**—

(1) **IN GENERAL.**—Compliance with this subtitle shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act, in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign

banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) VIOLATIONS OF THIS SUBTITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subtitle shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subtitle, any other authority conferred on such agency by law.

**SEC. 523. [15 U.S.C. 6823] CRIMINAL PENALTY.**

(a) IN GENERAL.—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 521 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

**SEC. 524. [15 U.S.C. 6824] RELATION TO STATE LAWS.**

(a) IN GENERAL.—This subtitle shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 522 of either the person that initiated the complaint or that is the subject

of the complaint, on its own motion or upon the petition of any interested party.

**SEC. 525. [15 U.S.C. 6825] AGENCY GUIDANCE.**

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

**SEC. 526. [15 U.S.C. 6826] REPORTS.**

(a) **REPORT TO THE CONGRESS.**—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subtitle in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) **ANNUAL REPORT BY ADMINISTERING AGENCIES.**—The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subtitle.

**SEC. 527. [15 U.S.C. 6827] DEFINITIONS.**

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

(1) **CUSTOMER.**—The term “customer” means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) **CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.**—The term “customer information of a financial institution” means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) **DOCUMENT.**—The term “document” means any information in any form.

(4) **FINANCIAL INSTITUTION.**—

(A) **IN GENERAL.**—The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, de-

posit, trust, or other financial account or relationship with the institution.

(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term “financial institution” includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p) of the Consumer Credit Protection Act).

(C) SECURITIES INSTITUTIONS.—For purposes of subparagraph (B)—

(i) the terms “broker” and “dealer” have the same meanings as given in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term “investment adviser” has the same meaning as given in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); and

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

(D) CERTAIN PERSONS AND ENTITIES SPECIFICALLY EXCLUDED.—The term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

(E) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

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## TITLE VII—OTHER PROVISIONS

\* \* \* \* \*

### Subtitle C—Other Regulatory Improvements

#### SEC. 721. EXPANDED SMALL BANK ACCESS TO S CORPORATION TREATMENT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of—

(1) possible revisions to the rules governing S corporations, including—

(A) increasing the permissible number of shareholders in such corporations;

(B) permitting shares of such corporations to be held in individual retirement accounts;

(C) clarifying that interest on investments held for safety, soundness, and liquidity purposes should not be considered to be passive income;

(D) discontinuation of the treatment of stock held by bank directors as a disqualifying personal class of stock for such corporations; and

(E) improving Federal tax treatment of bad debt and interest deductions; and

(2) what impact such revisions might have on community banks.

(b) **REPORT TO THE CONGRESS.**—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress on the results of the study conducted under subsection (a).

(c) **DEFINITION.**—For purposes of this section, the term “S corporation” has the meaning given the term in section 1361(a)(1) of the Internal Revenue Code of 1986.

**SEC. 722. [12 U.S.C. 4809] “PLAIN LANGUAGE” REQUIREMENT FOR FEDERAL BANKING AGENCY RULES.**

(a) **IN GENERAL.**—Each Federal banking agency shall use plain language in all proposed and final rulemakings published by the agency in the Federal Register after January 1, 2000.

(b) **REPORT.**—Not later than March 1, 2001, each Federal banking agency shall submit to the Congress a report that describes how the agency has complied with subsection (a).

(c) **DEFINITION.**—For purposes of this section, the term “Federal banking agency” has the meaning given that term in section 3 of the Federal Deposit Insurance Act.

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**SEC. 728. [12 U.S.C. 241 nt] GENERAL ACCOUNTING OFFICE STUDY OF CONFLICTS OF INTEREST.**

(a) **STUDY REQUIRED.**—The Comptroller General of the United States shall conduct a study analyzing the conflict of interest faced by the Board of Governors of the Federal Reserve System between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry.

(b) **SPECIFIC CONFLICT REQUIRED TO BE ADDRESSED.**—In the course of the study required under subsection (a), the Comptroller General shall address the conflict of interest faced by the Board of Governors of the Federal Reserve System between the role of the Board as a regulator of the payment system, generally, and its participation in the payment system as a competitor with private entities who are providing payment services.

(c) **REPORT TO THE CONGRESS.**—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study required under this section, together

with such recommendations for such legislative or administrative actions as the Comptroller General may determine to be appropriate, including recommendations for resolving any such conflict of interest.

**SEC. 729. [12 U.S.C. 4801 nt] STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING.**

(a) **STUDY REQUIRED.**—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

(b) **REPORT REQUIRED.**—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

(c) **DEFINITION.**—For purposes of this section, the term “Federal banking agencies” means each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act).

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**SEC. 733. FAIR TREATMENT OF WOMEN BY FINANCIAL ADVISERS.**

It is the sense of the Congress that individuals offering financial advice and products should offer such services and products in a nondiscriminatory, nongender-specific manner.

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