

**Amendment in the Nature of a Substitute  
to H.R. 10**

**Offered by Mr. Oxley**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

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

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

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

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

Sec. 1001. Short title.

Subtitle A—Establishment of National Intelligence Director

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

Sec. 1012. Revised definition of national intelligence.

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

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

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

Sec. 1016. Executive schedule matters.

Subtitle B—National Counterterrorism Center and Civil Liberties Protections

Sec. 1021. National Counterterrorism Center.

Sec. 1022. Civil Liberties Protection Officer.

Subtitle C—Joint Intelligence Community Council



Sec. 1031. Joint Intelligence Community Council.

Subtitle D—Improvement of Human Intelligence (HUMINT)

Sec. 1041. Human intelligence as an increasingly critical component of the intelligence community.

Sec. 1042. Improvement of human intelligence capacity.

Subtitle E—Improvement of Education for the Intelligence Community

Sec. 1051. Modification of obligated service requirements under National Security Education Program.

Sec. 1052. Improvements to the National Flagship Language Initiative.

Sec. 1053. Establishment of scholarship program for English language studies for heritage community citizens of the United States within the National Security Education Program.

Sec. 1054. Sense of Congress with respect to language and education for the intelligence community; reports.

Sec. 1055. Advancement of foreign languages critical to the intelligence community.

Sec. 1056. Pilot project for Civilian Linguist Reserve Corps.

Sec. 1057. Codification of establishment of the National Virtual Translation Center.

Sec. 1058. Report on recruitment and retention of qualified instructors of the Defense Language Institute.

Subtitle F—Additional Improvements of Intelligence Activities

Sec. 1061. Permanent extension of Central Intelligence Agency Voluntary Separation Incentive Program.

Sec. 1062. National Security Agency Emerging Technologies Panel.

Subtitle G—Conforming and Other Amendments

Sec. 1071. Conforming amendments relating to roles of National Intelligence Director and Director of the Central Intelligence Agency.

Sec. 1072. Other conforming amendments

Sec. 1073. Elements of intelligence community under National Security Act of 1947.

Sec. 1074. Redesignation of National Foreign Intelligence Program as National Intelligence Program.

Sec. 1075. Repeal of superseded authorities.

Sec. 1076. Clerical amendments to National Security Act of 1947.

Sec. 1077. Conforming amendments relating to prohibiting dual service of the Director of the Central Intelligence Agency.

Sec. 1078. Access to Inspector General protections.

Sec. 1079. General references.

Sec. 1080. Application of other laws.

Subtitle H—Transfer, Termination, Transition and Other Provisions

Sec. 1091. Transfer of community management staff.

Sec. 1092. Transfer of terrorist threat integration center.

Sec. 1093. Termination of positions of Assistant Directors of Central Intelligence.

Sec. 1094. Implementation plan.

Sec. 1095. Transitional authorities.



Sec. 1096. Effective dates.

Subtitle I—Grand Jury Information Sharing

Sec. 1101. Grand jury information sharing.

Subtitle J—Other Matters

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

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

**TITLE II—TERRORISM PREVENTION AND PROSECUTION**

Subtitle A—Individual Terrorists as Agents of Foreign Powers

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

Subtitle B—Stop Terrorist and Military Hoaxes Act of 2004

Sec. 2021. Short title.

Sec. 2022. Hoaxes and recovery costs.

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

Sec. 2024. Clarification of definition.

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

Sec. 2041. Short title.

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

Sec. 2043. Providing material support to terrorism.

Sec. 2044. Financing of terrorism.

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

Sec. 2051. Short title.

Sec. 2052. Weapons of mass destruction.

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

Subtitle E—Money Laundering and Terrorist Financing

CHAPTER 1—FUNDING TO COMBAT FINANCIAL CRIMES INCLUDING  
TERRORIST FINANCING

Sec. 2101. Additional authorization for FinCEN.

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

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

SUBCHAPTER A—MONEY LAUNDERING ABATEMENT AND FINANCIAL  
ANTITERRORISM TECHNICAL CORRECTIONS

Sec. 2111. Short title.

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

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

Sec. 2114. Repeal of review.



Sec. 2115. Effective date.

SUBCHAPTER B—ADDITIONAL ENFORCEMENT TOOLS

Sec. 2121. Bureau of Engraving and Printing security printing.

Sec. 2122. Conduct in aid of counterfeiting.

SUBCHAPTER C—UNLAWFUL INTERNET GAMBLING FUNDING PROHIBITION

Sec. 2131. Short title.

Sec. 2132. Findings.

Sec. 2133. Policies and procedures required to prevent payments for unlawful internet gambling.

Sec. 2134. Definitions.

Sec. 2135. Common sense rule of construction.

Subtitle F—Criminal History Background Checks

Sec. 2141. Short title.

Sec. 2142. Criminal history information checks.

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

Sec. 2171. Provision for the use of biometric or other technology.

Sec. 2172. Transportation security strategic planning.

Sec. 2173. Next generation airline passenger prescreening.

Sec. 2174. Deployment and use of explosive detection equipment at airport screening checkpoints.

Sec. 2175. Pilot program to evaluate use of blast-resistant cargo and baggage containers.

Sec. 2176. Air cargo screening technology.

Sec. 2177. Airport checkpoint screening explosive detection.

Sec. 2178. Next generation security checkpoint.

Sec. 2179. Penalty for failure to secure cockpit door.

Sec. 2180. Federal air marshal anonymity.

Sec. 2181. Federal law enforcement in-flight counterterrorism training.

Sec. 2182. Federal flight deck officer weapon carriage pilot program.

Sec. 2183. Registered traveler program.

Sec. 2184. Wireless communication.

Sec. 2185. Secondary flight deck barriers.

Sec. 2186. Extension.

Sec. 2187. Perimeter Security.

Sec. 2188. Definitions.

Subtitle H—Other Matters

Sec. 2191. Grand jury information sharing.

Sec. 2192. Interoperable law enforcement and intelligence data system.

Sec. 2193. Improvement of intelligence capabilities of the Federal Bureau of Investigation.

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

Subtitle A—Immigration Reform in the National Interest

CHAPTER 1—GENERAL PROVISIONS

Sec. 3001. Eliminating the “Western Hemisphere” exception for citizens.



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

CHAPTER 2—DEPORTATION OF TERRORISTS AND SUPPORTERS OF  
TERRORISM

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

Subtitle B—Identity Management Security

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

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

CHAPTER 2—IMPROVED SECURITY FOR BIRTH CERTIFICATES

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

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

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



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

Subtitle C—Targeting Terrorist Travel

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

Subtitle D—Terrorist Travel

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

Subtitle E—Maritime Security Requirements

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

**TITLE IV—INTERNATIONAL COOPERATION AND  
COORDINATION**

Subtitle A—Attack Terrorists and Their Organizations

CHAPTER 1—PROVISIONS RELATING TO TERRORIST SANCTUARIES

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

CHAPTER 2—OTHER PROVISIONS

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

Subtitle B—Prevent the Continued Growth of Terrorism



CHAPTER 1—UNITED STATES PUBLIC DIPLOMACY

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

CHAPTER 2—UNITED STATES MULTILATERAL DIPLOMACY

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

CHAPTER 3—OTHER PROVISIONS

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

Subtitle C—Reform of Designation of Foreign Terrorist Organizations

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

Subtitle D—Afghanistan Freedom Support Act Amendments of 2004

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

Subtitle E—Provisions Relating to Saudi Arabia and Pakistan

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



Subtitle F—Oversight Provisions

Sec. 4091. Case-Zablocki Act requirements.

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

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

Sec. 4102. Federal air marshal training.

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

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

Sec. 4111. Sense of the Congress regarding success in multilateral organiza-  
tions.

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

Sec. 4113. Coordination of United States Government efforts.

Sec. 4114. Definitions.

**TITLE V—GOVERNMENT RESTRUCTURING**

Subtitle A—Faster and Smarter Funding for First Responders

Sec. 5001. Short title.

Sec. 5002. Findings.

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

Sec. 5004. Modification of homeland security advisory system.

Sec. 5005. Coordination of industry efforts.

Sec. 5006. Superseded provision.

Sec. 5007. Sense of Congress regarding interoperable communications.

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

Sec. 5009. Study regarding nationwide emergency notification system.

Sec. 5010. Required coordination.

Subtitle B—Government Reorganization Authority

Sec. 5021. Authorization of intelligence community reorganization plans.

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

Sec. 5025. Responsibilities of Counternarcotics Office.

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

Sec. 5027. Sense of the House of Representatives on addressing homeland secu-  
rity for the American people.

Subtitle D—Improvements to Information Security

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

Subtitle E—Personnel Management Improvements

CHAPTER 1—APPOINTMENTS PROCESS REFORM



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

CHAPTER 2—FEDERAL BUREAU OF INVESTIGATION REVITALIZATION

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

CHAPTER 3—MANAGEMENT AUTHORITY

- Sec. 5061. Management authority.

Subtitle F—Security Clearance Modernization

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

Subtitle G—Emergency Financial Preparedness

CHAPTER 1—EMERGENCY PREPAREDNESS FOR FISCAL AUTHORITIES

- Sec. 5081. Delegation authority of the Secretary of the Treasury.

CHAPTER 2—MARKET PREPAREDNESS

SUBCHAPTER A—NETTING OF FINANCIAL CONTRACTS

- Sec. 5082. Short title.
- Sec. 5082A. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 5082B. Authority of the FDIC and NCUAB with respect to failed and failing institutions.
- Sec. 5082C. Amendments relating to transfers of qualified financial contracts.
- Sec. 5082D. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 5082E. Clarifying amendment relating to master agreements.
- Sec. 5082F. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 5082G. Bankruptcy code amendments.
- Sec. 5082H. Recordkeeping requirements.
- Sec. 5082I. Exemptions from contemporaneous execution requirement.
- Sec. 5082J. Damage measure.
- Sec. 5082K. SIPC stay.
- Sec. 5082L. Applicability of other sections to chapter 9.
- Sec. 5082M. Effective date; application of amendments.



Sec. 5082N. Savings clause.

SUBCHAPTER B—EMERGENCY SECURITIES RESPONSE

Sec. 5086. Short title.

Sec. 5087. Extension of emergency order authority of the Securities and Exchange Commission.

Sec. 5088. Parallel authority of the Secretary of the Treasury with respect to government securities.

Subtitle H—Other Matters

CHAPTER 1—PRIVACY MATTERS

Sec. 5091. Requirement that agency rulemaking take into consideration impacts on individual privacy.

Sec. 5092. Chief privacy officers for agencies with law enforcement or anti-terrorism functions.

CHAPTER 2—MUTUAL AID AND LITIGATION MANAGEMENT

Sec. 5101. Short title.

Sec. 5102. Mutual aid authorized.

Sec. 5103. Litigation management agreements.

Sec. 5104. Additional provisions.

Sec. 5105. Definitions.

CHAPTER 3—MISCELLANEOUS MATTERS

Sec. 5131. Enhancement of public safety communications interoperability.

Sec. 5132. Sense of Congress regarding the incident command system.

Sec. 5133. Sense of Congress regarding United States Northern Command plans and strategies.

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

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

3           **TITLE II—TERRORISM PREVEN-**  
4           **TION AND PROSECUTION**

          [Subtitles A through D of title II of the  
Amendment in the Nature of a Substitute con-



sist of subtitles A through D of title II of the  
bill H.R. 10, as introduced on September 24,  
2004]

1 **Subtitle E—Money Laundering and**  
2 **Terrorist Financing**

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

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

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

9 (1) by striking “APPROPRIATIONS.—There are  
10 authorized” and inserting “APPROPRIATIONS.—

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

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

14 “(2) AUTHORIZATION FOR FUNDING KEY TECH-  
15 NOLOGICAL IMPROVEMENTS IN MISSION-CRITICAL  
16 FINCEN SYSTEMS.—There are authorized to be ap-  
17 propriated for fiscal year 2005 the following  
18 amounts, which are authorized to remain available  
19 until expended:

20 “(A) BSA DIRECT.—For technological im-  
21 provements to provide authorized law enforce-  
22 ment and financial regulatory agencies with



1 Web-based access to FinCEN data, to fully de-  
2 velop and implement the highly secure network  
3 required under section 362 of Public Law 107-  
4 56 to expedite the filing of, and reduce the fil-  
5 ing costs for, financial institution reports, in-  
6 cluding suspicious activity reports, collected by  
7 FinCEN under chapter 53 and related provi-  
8 sions of law, and enable FinCEN to imme-  
9 diately alert financial institutions about sus-  
10 picious activities that warrant immediate and  
11 enhanced scrutiny, and to provide and upgrade  
12 advanced information-sharing technologies to  
13 materially improve the Government's ability to  
14 exploit the information in the FinCEN  
15 databanks, \$16,500,000.

16 “(B) ADVANCED ANALYTICAL TECH-  
17 NOLOGIES.—To provide advanced analytical  
18 tools needed to ensure that the data collected  
19 by FinCEN under chapter 53 and related provi-  
20 sions of law are utilized fully and appropriately  
21 in safeguarding financial institutions and sup-  
22 porting the war on terrorism, \$5,000,000.

23 “(C) DATA NETWORKING MODERNIZA-  
24 TION.—To improve the telecommunications in-



1           frastructure to support the improved capabili-  
2           ties of the FinCEN systems, \$3,000,000.

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

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

12 **SEC. 2102. MONEY LAUNDERING AND FINANCIAL CRIMES**  
13                   **STRATEGY REAUTHORIZATION.**

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

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

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



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

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

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

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

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

12 **56.**

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

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

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

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

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



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

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

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

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

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

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

16 (1) in paragraph (1)—

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

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

21 (2) in paragraph (2)(A)—

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

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



1 (3) in paragraph (3)(A)—

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



1 **Subchapter B—Additional enforcement tools**

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

3 **Subchapter C—Unlawful Internet Gambling**  
4 **Funding Prohibition**

5 **SEC. 2131. SHORT TITLE.**

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

8 **SEC. 2132. FINDINGS.**

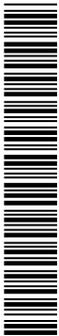
9 The Congress finds as follows:

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

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

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

20 (4) Internet gambling conducted through off-  
21 shore jurisdictions has been identified by United  
22 States law enforcement officials as a significant  
23 money laundering vulnerability.



1 **SEC. 2133. POLICIES AND PROCEDURES REQUIRED TO PRE-**  
2 **VENT PAYMENTS FOR UNLAWFUL INTERNET**  
3 **GAMBLING.**

4 (a) REGULATIONS.—Before the end of the 6-month  
5 period beginning on the date of the enactment of this sub-  
6 chapter, the Federal functional regulators shall prescribe  
7 regulations requiring any designated payment system to  
8 establish policies and procedures reasonably designed to  
9 identify and prevent restricted transactions in any of the  
10 following ways:

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

13 (A) allow the payment system and any per-  
14 son involved in the payment system to identify  
15 restricted transactions by means of codes in au-  
16 thorization messages or by other means; and

17 (B) block restricted transactions identified  
18 as a result of the policies and procedures devel-  
19 oped pursuant to subparagraph (A).

20 (2) The establishment of policies and proce-  
21 dures that prevent the acceptance of the products or  
22 services of the payment system in connection with a  
23 restricted transaction.

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



1           (1) identify types of policies and procedures, in-  
2           cluding nonexclusive examples, which would be  
3           deemed to be “reasonably designed to identify” and  
4           “reasonably designed to block” or to “prevent the  
5           acceptance of the products or services” with respect  
6           to each type of transaction, such as, should credit  
7           card transactions be so designated, identifying trans-  
8           actions by a code or codes in the authorization mes-  
9           sage and denying authorization of a credit card  
10          transaction in response to an authorization message;

11          (2) to the extent practical, permit any partici-  
12          pant in a payment system to choose among alter-  
13          native means of identifying and blocking, or other-  
14          wise preventing the acceptance of the products or  
15          services of the payment system or participant in con-  
16          nection with, restricted transactions; and

17          (3) consider exempting restricted transactions  
18          from any requirement under subsection (a) if the  
19          Federal functional regulators find that it is not rea-  
20          sonably practical to identify and block, or otherwise  
21          prevent, such transactions.

22          (c) COMPLIANCE WITH PAYMENT SYSTEM POLICIES  
23          AND PROCEDURES.—A creditor, credit card issuer, finan-  
24          cial institution, operator of a terminal at which an elec-  
25          tronic fund transfer may be initiated, money transmitting



1 business, or international, national, regional, or local net-  
2 work utilized to effect a credit transaction, electronic fund  
3 transfer, or money transmitting service, or a participant  
4 in such network, meets the requirement of subsection (a)  
5 if—

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

9 (A) identify and block restricted trans-  
10 actions; or

11 (B) otherwise prevent the acceptance of  
12 the products or services of the payment system,  
13 member, or participant in connection with re-  
14 stricted transactions; and

15 (2) such policies and procedures of the des-  
16 ignated payment system comply with the require-  
17 ments of regulations prescribed under subsection  
18 (a).

19 (d) ENFORCEMENT.—

20 (1) IN GENERAL.—This section shall be en-  
21 forced by the Federal functional regulators and the  
22 Federal Trade Commission under applicable law in  
23 the manner provided in section 505(a) of the  
24 Gramm-Leach-Bliley Act.



1           (2) FACTORS TO BE CONSIDERED.—In consid-  
2           ering any enforcement action under this subsection  
3           against any payment system, or any participant in  
4           a payment system that is a creditor, credit card  
5           issuer, financial institution, operator of a terminal at  
6           which an electronic fund transfer may be initiated,  
7           money transmitting business, or international, na-  
8           tional, regional, or local network utilized to effect a  
9           credit transaction, electronic fund transfer, or money  
10          transmitting service, or a participant in such net-  
11          work, the Federal functional regulators and the Fed-  
12          eral Trade Commission shall consider the following  
13          factors:

14                   (A) The extent to which such person is ex-  
15                   tending credit or transmitting funds knowing  
16                   the transaction is in connection with unlawful  
17                   Internet gambling.

18                   (B) The history of such person in extend-  
19                   ing credit or transmitting funds knowing the  
20                   transaction is in connection with unlawful  
21                   Internet gambling.

22                   (C) The extent to which such person has  
23                   established and is maintaining policies and pro-  
24                   cedures in compliance with regulations pre-  
25                   scribed under this subsection.



1           (D) The feasibility that any specific rem-  
2           edy prescribed can be implemented by such per-  
3           son without substantial deviation from normal  
4           business practice.

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

7 **SEC. 2134. DEFINITIONS.**

8           For purposes of this subchapter, the following defini-  
9           tions shall apply:

10           (1) RESTRICTED TRANSACTION.—The term “re-  
11           stricted transaction” means any transaction or  
12           transmittal to any person engaged in the business of  
13           betting or wagering, in connection with the partici-  
14           pation of another person in unlawful Internet gam-  
15           bling, of—

16           (A) credit, or the proceeds of credit, ex-  
17           tended to or on behalf of such other person (in-  
18           cluding credit extended through the use of a  
19           credit card);

20           (B) an electronic fund transfer or funds  
21           transmitted by or through a money transmit-  
22           ting business, or the proceeds of an electronic  
23           fund transfer or money transmitting service,  
24           from or on behalf of the other person;



1 (C) any check, draft, or similar instrument  
2 which is drawn by or on behalf of the other per-  
3 son and is drawn on or payable at or through  
4 any financial institution; or

5 (D) the proceeds of any other form of fi-  
6 nancial transaction as the Federal functional  
7 regulators may prescribe by regulation which  
8 involves a financial institution as a payor or fi-  
9 nancial intermediary on behalf of or for the  
10 benefit of the other person.

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

13 (A) means the staking or risking by any  
14 person of something of value upon the outcome  
15 of a contest of others, a sporting event, or a  
16 game subject to chance, upon an agreement or  
17 understanding that the person or another per-  
18 son will receive something of greater value than  
19 the amount staked or risked in the event of a  
20 certain outcome;

21 (B) includes the purchase of a chance or  
22 opportunity to win a lottery or other prize  
23 (which opportunity to win is predominantly sub-  
24 ject to chance);



1 (C) includes any scheme of a type de-  
2 scribed in section 3702 of title 28, United  
3 States Code;

4 (D) includes any instructions or informa-  
5 tion pertaining to the establishment or move-  
6 ment of funds in an account by the bettor or  
7 customer with the business of betting or wager-  
8 ing; and

9 (E) does not include—

10 (i) any activity governed by the secu-  
11 rities laws (as that term is defined in sec-  
12 tion 3(a)(47) of the Securities Exchange  
13 Act of 1934) for the purchase or sale of se-  
14 curities (as that term is defined in section  
15 3(a)(10) of such Act);

16 (ii) any transaction conducted on or  
17 subject to the rules of a registered entity  
18 or exempt board of trade pursuant to the  
19 Commodity Exchange Act;

20 (iii) any over-the-counter derivative  
21 instrument;

22 (iv) any other transaction that—

23 (I) is excluded or exempt from  
24 regulation under the Commodity Ex-  
25 change Act; or



1 (II) is exempt from State gaming  
2 or bucket shop laws under section  
3 12(e) of the Commodity Exchange Act  
4 or section 28(a) of the Securities Ex-  
5 change Act of 1934;

6 (v) any contract of indemnity or guar-  
7 antee;

8 (vi) any contract for insurance;

9 (vii) any deposit or other transaction  
10 with a depository institution (as defined in  
11 section 3(c) of the Federal Deposit Insur-  
12 ance Act);

13 (viii) any participation in a simulation  
14 sports game or an educational game or  
15 contest that—

16 (I) is not dependent solely on the  
17 outcome of any single sporting event  
18 or nonparticipant's singular individual  
19 performance in any single sporting  
20 event;

21 (II) has an outcome that reflects  
22 the relative knowledge and skill of the  
23 participants with such outcome deter-  
24 mined predominantly by accumulated



1 statistical results of sporting events;  
2 and

3 (III) offers a prize or award to a  
4 participant that is established in ad-  
5 vance of the game or contest and is  
6 not determined by the number of par-  
7 ticipants or the amount of any fees  
8 paid by those participants; and

9 (ix) any lawful transaction with a  
10 business licensed or authorized by a State.

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

24 (4) FEDERAL FUNCTIONAL REGULATOR.—The  
25 term “Federal functional regulator” has the same



1 meaning as in section 509(2) of the Gramm-Leach-  
2 Bliley Act.

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

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

14 (7) OTHER TERMS.—

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

20 (B) ELECTRONIC FUND TRANSFER.—The  
21 term “electronic fund transfer”—

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



1 (ii) includes any fund transfer covered  
2 by Article 4A of the Uniform Commercial  
3 Code, as in effect in any State.

4 (C) FINANCIAL INSTITUTION.—The term  
5 “financial institution”—

6 (i) has the meaning given such term  
7 in section 903 of the Electronic Fund  
8 Transfer Act; and

9 (ii) includes any financial institution,  
10 as defined in section 509(3) of the  
11 Gramm-Leach-Bliley Act.

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

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

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



1       **Subtitle F—Criminal History**  
2               **Background Checks**

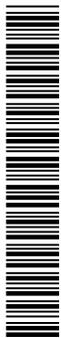
      【Subtitles F through H of title II of the  
Amendment in the Nature of a Substitute con-  
sist of subtitles F through H of title II of the  
bill H.R. 10, as introduced on September 24,  
2004】

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

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

5       **TITLE IV—INTERNATIONAL CO-**  
6               **OPERATION AND COORDINA-**  
7               **TION**

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



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

5 **SEC. 4111. SENSE OF THE CONGRESS REGARDING SUCCESS**  
6 **IN MULTILATERAL ORGANIZATIONS.**

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

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

20 (2) The Secretary of the Treasury has engaged  
21 the international financial community in the global  
22 fight against terrorist financing. Specifically, the De-  
23 partment of the Treasury helped redirect the focus  
24 of the Financial Action Task Force on the new  
25 threat posed by terrorist financing to the inter-



1 national financial system, resulting in the establish-  
2 ment of the FATF's Eight Special Recommenda-  
3 tions on Terrorist Financing as the international  
4 standard on combating terrorist financing. The Sec-  
5 retary of the Treasury has engaged the Group of  
6 Seven and the Group of Twenty Finance Ministers  
7 to develop action plans to curb the financing of ter-  
8 ror. In addition, other economic and regional fora,  
9 such as the Asia-Pacific Economic Cooperation  
10 (APEC) Forum, the Western Hemisphere Financial  
11 Ministers, have been used to marshal political will  
12 and actions in support of countering the financing of  
13 terrorism (CFT) standards.

14 (3) FATF's Forty Recommendations on Money  
15 Laundering and the Eight Special Recommendations  
16 on Terrorist Financing are the recognized global  
17 standards for fighting money laundering and ter-  
18 rorist financing. The FATF has engaged in an as-  
19 sessment process for jurisdictions based on their  
20 compliance with these standards.

21 (4) In March 2004, the IMF and IBRD Boards  
22 agreed to make permanent a pilot program of col-  
23 laboration with the FATF to assess global compli-  
24 ance with the FATF Forty Recommendations on  
25 Money Laundering and the Eight Special Rec-



1 ommendations on Terrorist Financing. As a result,  
2 anti-money laundering (AML) and combating the fi-  
3 nancing of terrorism (CFT) assessments are now a  
4 regular part of their Financial Sector Assessment  
5 Program (FSAP) and Offshore Financial Center as-  
6 sessments, which provide for a comprehensive anal-  
7 ysis of the strength of a jurisdiction's financial sys-  
8 tem. These reviews assess potential systemic  
9 vulnerabilities, consider sectoral development needs  
10 and priorities, and review the state of implementa-  
11 tion of and compliance with key financial codes and  
12 regulatory standards, among them the AML and  
13 CFT standards.

14 (5) To date, 70 FSAPs have been conducted,  
15 with over 24 of those incorporating AML and CFT  
16 assessments. The international financial institutions  
17 (IFIs), the FATF, and the FATF-style regional  
18 bodies together are expected to assess AML and  
19 CFT regimes in up to 40 countries or jurisdictions  
20 per year. This will help countries and jurisdictions  
21 identify deficiencies in their AML and CFT regimes  
22 and help focus technical assistance (TA) efforts.

23 (6) TA programs from the United States and  
24 other nations, coordinated with the Department of  
25 State and other departments and agencies, are play-



1       ing an important role in helping countries and jurisdic-  
2       dictions address shortcomings in their AML and  
3       CFT regimes and bringing their regimes into con-  
4       formity with international standards. Training is co-  
5       ordinated within the United States Government,  
6       which leverages multilateral organizations and bodies  
7       and international financial institutions to inter-  
8       nationalize the conveyance of technical assistance.

9               (7) In fulfilling its duties in advancing incorpora-  
10       tion of AML and CFT standards into the IFIs as  
11       part of the IFIs' work on protecting the integrity of  
12       the international monetary system, the Department  
13       of the Treasury, under the guidance of the Secretary  
14       of the Treasury, has effectively brought together all  
15       of the key United States Government agencies. In  
16       particular, United States Government agencies con-  
17       tinue to work together to foster broad support for  
18       this important undertaking in various multilateral  
19       fora, and United States Government agencies recog-  
20       nize the need for close coordination and communica-  
21       tion within our own government.

22       (b) SENSE OF THE CONGRESS.—It is the sense of  
23       the Congress that the Secretary of the Treasury should  
24       continue to promote the dissemination of international  
25       AML and CFT standards, and to press for full implemen-



1 tation of the FATF 40 + 8 Recommendations by all coun-  
2 tries in order to curb financial risks and hinder terrorist  
3 financing around the globe.

4 **SEC. 4112. EXPANDED REPORTING AND TESTIMONY RE-**  
5 **QUIREMENTS FOR THE SECRETARY OF THE**  
6 **TREASURY.**

7 (a) REPORTING REQUIREMENTS.—Section 1503(a)  
8 of the International Financial Institutions Act (22 U.S.C.  
9 2620-2(a)) is amended by adding at the end the following  
10 new paragraph:

11 “(15) Work with the International Monetary  
12 Fund to—

13 “(A) foster strong global anti-money laun-  
14 dering (AML) and combat the financing of ter-  
15 rorism (CFT) regimes;

16 “(B) ensure that country performance  
17 under the Financial Action Task Force anti-  
18 money laundering and counter-terrorist financ-  
19 ing standards is effectively and comprehensively  
20 monitored;

21 “(C) ensure note is taken of AML and  
22 CFT issues in Article IV reports, International  
23 Monetary Fund programs, and other regular re-  
24 views of country progress;



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

4           “(E) emphasize the importance of sound  
5 AML and CFT regimes to global growth and  
6 development.”.

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

9           (1) by striking “and” at the end of paragraph  
10 (2);

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

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

14           “(4) the status of implementation of inter-  
15 national anti-money laundering and counter-terrorist  
16 financing standards by the International Monetary  
17 Fund, the multilateral development banks, and other  
18 multilateral financial policymaking bodies.”.

19 **SEC. 4113. COORDINATION OF UNITED STATES GOVERN-**  
20 **MENT EFFORTS.**

21           The Secretary of the Treasury, or the designee of the  
22 Secretary as the lead United States Government official  
23 to the Financial Action Task Force (FATF), shall con-  
24 tinue to convene the interagency United States Govern-  
25 ment FATF working group. This group, which includes



1 representatives from all relevant federal agencies, shall  
2 meet at least once a year to advise the Secretary on poli-  
3 cies to be pursued by the United States regarding the de-  
4 velopment of common international AML and CFT stand-  
5 ards, to assess the adequacy and implementation of such  
6 standards, and to recommend to the Secretary improved  
7 or new standards as necessary.

8 **SEC. 4114. DEFINITIONS.**

9 In this subtitle:

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

14 (2) FINANCIAL ACTION TASK FORCE.—The  
15 term “Financial Action Task Force” means the  
16 international policy-making and standard-setting  
17 body dedicated to combating money laundering and  
18 terrorist financing that was created by the Group of  
19 Seven in 1989.

20 **TITLE V—GOVERNMENT**  
21 **RESTRUCTURING**

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



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

1     **Subtitle G—Emergency Financial**  
2                     **Preparedness**  
3     **CHAPTER 1—EMERGENCY PREPARED-**  
4                     **NESS FOR FISCAL AUTHORITIES**

5     **SEC. 5081. DELEGATION AUTHORITY OF THE SECRETARY**  
6                     **OF THE TREASURY.**

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

10     **CHAPTER 2—MARKET PREPAREDNESS**  
11                     **Subchapter A—Netting of Financial**  
12                     **Contracts**

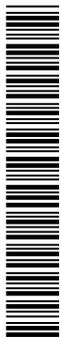
13     **SEC. 5082. SHORT TITLE.**

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

16     **SEC. 5082A. TREATMENT OF CERTAIN AGREEMENTS BY**  
17                     **CONSERVATORS OR RECEIVERS OF INSURED**  
18                     **DEPOSITORY INSTITUTIONS.**

19             (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
20 TRACT.—

21                     (1) FDIC-INSURED DEPOSITORY INSTITU-  
22 TIONS.—Section 11(e)(8)(D) of the Federal Deposit



1 Insurance Act (12 U.S.C. 1821(e)(8)(D)) is  
2 amended—

3 (A) by striking “subsection—” and insert-  
4 ing “subsection, the following definitions shall  
5 apply:”; and

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

9 (2) INSURED CREDIT UNIONS.—Section  
10 207(c)(8)(D) of the Federal Credit Union Act (12  
11 U.S.C. 1787(c)(8)(D)) is amended—

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

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

18 (b) DEFINITION OF SECURITIES CONTRACT.—

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

23 “(ii) SECURITIES CONTRACT.—The  
24 term ‘securities contract’—



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

19                   “(II) does not include any pur-  
20 chase, sale, or repurchase obligation  
21 under a participation in a commercial  
22 mortgage loan unless the Corporation  
23 determines by regulation, resolution,  
24 or order to include any such agree-



1                   ment within the meaning of such  
2                   term;

3                   “(III) means any option entered  
4                   into on a national securities exchange  
5                   relating to foreign currencies;

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

20                  “(V) means any margin loan;

21                  “(VI) means any other agree-  
22                  ment or transaction that is similar to  
23                  any agreement or transaction referred  
24                  to in this clause;



1                   “(VII) means any combination of  
2 the agreements or transactions re-  
3 ferred to in this clause;

4                   “(VIII) means any option to  
5 enter into any agreement or trans-  
6 action referred to in this clause;

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

24                   “(X) means any security agree-  
25 ment or arrangement or other credit



1 enhancement related to any agree-  
2 ment or transaction referred to in this  
3 clause, including any guarantee or re-  
4 imbursement obligation in connection  
5 with any agreement or transaction re-  
6 ferred to in this clause.”.

7 (2) INSURED CREDIT UNIONS.—Section  
8 207(c)(8)(D)(ii) of the Federal Credit Union Act  
9 (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as  
10 follows:

11 “(ii) SECURITIES CONTRACT.—The  
12 term ‘securities contract’—

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



1 and including any repurchase or re-  
2 verse repurchase transaction on any  
3 such security, certificate of deposit,  
4 mortgage loan, interest, group or  
5 index, or option;

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

13 “(III) means any option entered  
14 into on a national securities exchange  
15 relating to foreign currencies;

16 “(IV) means the guarantee by or  
17 to any securities clearing agency of  
18 any settlement of cash, securities, cer-  
19 tificates of deposit, mortgage loans or  
20 interests therein, group or index of se-  
21 curities, certificates of deposit, or  
22 mortgage loans or interests therein  
23 (including any interest therein or  
24 based on the value thereof) or option  
25 on any of the foregoing, including any



1 option to purchase or sell any such se-  
2 curity, certificate of deposit, mortgage  
3 loan, interest, group or index, or op-  
4 tion;

5 “(V) means any margin loan;

6 “(VI) means any other agree-  
7 ment or transaction that is similar to  
8 any agreement or transaction referred  
9 to in this clause;

10 “(VII) means any combination of  
11 the agreements or transactions re-  
12 ferred to in this clause;

13 “(VIII) means any option to  
14 enter into any agreement or trans-  
15 action referred to in this clause;

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



1 the master agreement shall be consid-  
2 ered to be a securities contract under  
3 this clause only with respect to each  
4 agreement or transaction under the  
5 master agreement that is referred to  
6 in subclause (I), (III), (IV), (V), (VI),  
7 (VII), or (VIII); and

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

16 (c) DEFINITION OF COMMODITY CONTRACT.—

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

21 “(iii) COMMODITY CONTRACT.—The  
22 term ‘commodity contract’ means—

23 “(I) with respect to a futures  
24 commission merchant, a contract for  
25 the purchase or sale of a commodity



1 for future delivery on, or subject to  
2 the rules of, a contract market or  
3 board of trade;

4 “(II) with respect to a foreign fu-  
5 tures commission merchant, a foreign  
6 future;

7 “(III) with respect to a leverage  
8 transaction merchant, a leverage  
9 transaction;

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

21 “(V) with respect to a commodity  
22 options dealer, a commodity option;

23 “(VI) any other agreement or  
24 transaction that is similar to any



1 agreement or transaction referred to  
2 in this clause;

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

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

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



1 (II), (III), (IV), (V), (VI), (VII), or  
2 (VIII); or

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

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

15 “(iii) COMMODITY CONTRACT.—The  
16 term ‘commodity contract’ means—

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

23 “(II) with respect to a foreign fu-  
24 tures commission merchant, a foreign  
25 future;



1                   “(III) with respect to a leverage  
2 transaction merchant, a leverage  
3 transaction;

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

15                   “(V) with respect to a commodity  
16 options dealer, a commodity option;

17                   “(VI) any other agreement or  
18 transaction that is similar to any  
19 agreement or transaction referred to  
20 in this clause;

21                   “(VII) any combination of the  
22 agreements or transactions referred to  
23 in this clause;



1                   “(VIII) any option to enter into  
2 any agreement or transaction referred  
3 to in this clause;

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

22                   “(X) any security agreement or  
23 arrangement or other credit enhance-  
24 ment related to any agreement or  
25 transaction referred to in this clause,



1 including any guarantee or reimburse-  
2 ment obligation in connection with  
3 any agreement or transaction referred  
4 to in this clause.”.

5 (d) DEFINITION OF FORWARD CONTRACT.—

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

10 “(iv) FORWARD CONTRACT.—The  
11 term ‘forward contract’ means—

12 “(I) a contract (other than a  
13 commodity contract) for the purchase,  
14 sale, or transfer of a commodity or  
15 any similar good, article, service,  
16 right, or interest which is presently or  
17 in the future becomes the subject of  
18 dealing in the forward contract trade,  
19 or product or by-product thereof, with  
20 a maturity date more than 2 days  
21 after the date the contract is entered  
22 into, including, a repurchase trans-  
23 action, reverse repurchase transaction,  
24 consignment, lease, swap, hedge  
25 transaction, deposit, loan, option, allo-



1 cated transaction, unallocated trans-  
2 action, or any other similar agree-  
3 ment;

4 “(II) any combination of agree-  
5 ments or transactions referred to in  
6 subclauses (I) and (III);

7 “(III) any option to enter into  
8 any agreement or transaction referred  
9 to in subclause (I) or (II);

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



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

10               (2)   INSURED   CREDIT   UNIONS.—Section  
11               207(c)(8)(D)(iv) of the Federal Credit Union Act  
12               (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as  
13               follows:

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

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



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

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

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

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



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

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

13 (e) DEFINITION OF REPURCHASE AGREEMENT.—

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

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

22 “(I) means an agreement, includ-  
23 ing related terms, which provides for  
24 the transfer of one or more certifi-  
25 cates of deposit, mortgage-related se-



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

24 “(II) does not include any repur-  
25 chase obligation under a participation



1 in a commercial mortgage loan unless  
2 the Corporation determines by regula-  
3 tion, resolution, or order to include  
4 any such participation within the  
5 meaning of such term;

6 “(III) means any combination of  
7 agreements or transactions referred to  
8 in subclauses (I) and (IV);

9 “(IV) means any option to enter  
10 into any agreement or transaction re-  
11 ferred to in subclause (I) or (III);

12 “(V) means a master agreement  
13 that provides for an agreement or  
14 transaction referred to in subclause  
15 (I), (III), or (IV), together with all  
16 supplements to any such master  
17 agreement, without regard to whether  
18 the master agreement provides for an  
19 agreement or transaction that is not a  
20 repurchase agreement under this  
21 clause, except that the master agree-  
22 ment shall be considered to be a re-  
23 purchase agreement under this sub-  
24 clause only with respect to each agree-  
25 ment or transaction under the master



1 agreement that is referred to in sub-  
2 clause (I), (III), or (IV); and

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

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

21 (2) INSURED CREDIT UNIONS.—Section  
22 207(c)(8)(D)(v) of the Federal Credit Union Act (12  
23 U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-  
24 lows:



1                   “(v) REPURCHASE AGREEMENT.—The  
2                   term ‘repurchase agreement’ (which defini-  
3                   tion also applies to a reverse repurchase  
4                   agreement)—

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



1 acceptances, securities, mortgage  
2 loans, or interests as described above,  
3 at a date certain not later than 1 year  
4 after such transfers or on demand,  
5 against the transfer of funds, or any  
6 other similar agreement;

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

14 “(III) means any combination of  
15 agreements or transactions referred to  
16 in subclauses (I) and (IV);

17 “(IV) means any option to enter  
18 into any agreement or transaction re-  
19 ferred to in subclause (I) or (III);

20 “(V) means a master agreement  
21 that provides for an agreement or  
22 transaction referred to in subclause  
23 (I), (III), or (IV), together with all  
24 supplements to any such master  
25 agreement, without regard to whether



1 the master agreement provides for an  
2 agreement or transaction that is not a  
3 repurchase agreement under this  
4 clause, except that the master agree-  
5 ment shall be considered to be a re-  
6 purchase agreement under this sub-  
7 clause only with respect to each agree-  
8 ment or transaction under the master  
9 agreement that is referred to in sub-  
10 clause (I), (III), or (IV); and

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

20 For purposes of this clause, the term  
21 ‘qualified foreign government security’  
22 means a security that is a direct obligation  
23 of, or that is fully guaranteed by, the cen-  
24 tral government of a member of the Orga-  
25 nization for Economic Cooperation and



1                   Development (as determined by regulation  
2                   or order adopted by the appropriate Fed-  
3                   eral banking authority).”.

4                   (f) DEFINITION OF SWAP AGREEMENT.—

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

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

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



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

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



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

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

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

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



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

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



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

5                       “(vi) SWAP AGREEMENT.—The term  
6                       ‘swap agreement’ means—

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



1                   tion, future, or forward agreement; or  
2                   a weather swap, weather derivative, or  
3                   weather option;

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



1                   “(III) any combination of agree-  
2                   ments or transactions referred to in  
3                   this clause;

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

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

23                  “(VI) any security agreement or  
24                  arrangement or other credit enhance-  
25                  ment related to any agreements or



1 transactions referred to in subclause  
2 (I), (II), (III), (IV), or (V), including  
3 any guarantee or reimbursement obli-  
4 gation in connection with any agree-  
5 ment or transaction referred to in any  
6 such subclause.

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

23 (g) DEFINITION OF TRANSFER.—

24 (1) FDIC-INSURED DEPOSITORY INSTITU-  
25 TIONS.—Section 11(e)(8)(D)(viii) of the Federal De-



1       posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii))  
2       is amended to read as follows:

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

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

16                   “(viii) TRANSFER.—The term ‘trans-  
17                   fer’ means every mode, direct or indirect,  
18                   absolute or conditional, voluntary or invol-  
19                   untary, of disposing of or parting with  
20                   property or with an interest in property,  
21                   including retention of title as a security in-  
22                   terest and foreclosure of the depository in-  
23                   stitution’s equity of redemption.”.

24       (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
25       TRACTS.—



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

4                   (A) in subparagraph (A)—

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

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

11                          (iii) by striking clause (ii) and insert-  
12                          ing the following new clause:

13                           “(ii) any right under any security  
14                           agreement or arrangement or other credit  
15                           enhancement related to one or more quali-  
16                           fied financial contracts described in clause  
17                           (i);”;

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

20                           “(ii) any right under any security  
21                           agreement or arrangement or other credit  
22                           enhancement related to one or more quali-  
23                           fied financial contracts described in clause  
24                           (i);”.



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

4                   (A) in subparagraph (A)—

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

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

11                           (iii) by striking clause (ii) and insert-  
12                           ing the following new clause:

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

18                           (B) in subparagraph (E), by striking  
19                           clause (ii) and inserting the following new  
20                           clause:

21                           “(ii) any right under any security  
22                           agreement or arrangement or other credit  
23                           enhancement related to 1 or more qualified  
24                           financial contracts described in clause  
25                           (i);”.



1 (i) AVOIDANCE OF TRANSFERS.—

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

9 (2) INSURED CREDIT UNIONS.—Section  
10 207(c)(8)(C)(i) of the Federal Credit Union Act (12  
11 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting  
12 “section 5242 of the Revised Statutes of the United  
13 States or any other Federal or State law relating to  
14 the avoidance of preferential or fraudulent trans-  
15 fers,” before “the Board”.

16 **SEC. 5082B. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**  
17 **SPECT TO FAILED AND FAILING INSTITU-**  
18 **TIONS.**

19 (a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

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

23 (A) in subparagraph (E), by striking  
24 “other than paragraph (12) of this subsection,



1 subsection (d)(9)” and inserting “other than  
2 subsections (d)(9) and (e)(10)”;

3 (B) by adding at the end the following new  
4 subparagraphs:

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

15 “(G) WALKAWAY CLAUSES NOT EFFEC-  
16 TIVE.—

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



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

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

20                  (b) NATIONAL CREDIT UNION ADMINISTRATION  
21                  BOARD.—

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



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

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

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

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

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



1                    nancial contract of an insured credit union  
2                    in default.

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

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

22                    **SEC. 5082C. AMENDMENTS RELATING TO TRANSFERS OF**  
23                    **QUALIFIED FINANCIAL CONTRACTS.**

24                    (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—



1           (1) TRANSFERS OF QUALIFIED FINANCIAL CON-  
2           TRACTS TO FINANCIAL INSTITUTIONS.—Section  
3           11(e)(9) of the Federal Deposit Insurance Act (12  
4           U.S.C. 1821(e)(9)) is amended to read as follows:

5           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
6           TRACTS.—

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

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

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

23           “(II) all claims of such person or  
24          any affiliate of such person against  
25          such depository institution under any



1 such contract (other than any claim  
2 which, under the terms of any such  
3 contract, is subordinated to the claims  
4 of general unsecured creditors of such  
5 institution);

6 “(III) all claims of such deposi-  
7 tory institution against such person or  
8 any affiliate of such person under any  
9 such contract; and

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

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

20 “(B) TRANSFER TO FOREIGN BANK, FOR-  
21 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
22 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
23 STITUTION.—In transferring any qualified fi-  
24 nancial contracts and related claims and prop-  
25 erty under subparagraph (A)(i), the conservator



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

17 “(C) TRANSFER OF CONTRACTS SUBJECT  
18 TO THE RULES OF A CLEARING ORGANIZA-  
19 TION.—In the event that a conservator or re-  
20 ceiver transfers any qualified financial contract  
21 and related claims, property, and credit en-  
22 hancements pursuant to subparagraph (A)(i)  
23 and such contract is cleared by or subject to the  
24 rules of a clearing organization, the clearing or-  
25 ganization shall not be required to accept the



1 transferee as a member by virtue of the trans-  
2 fer.

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

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



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

5                   (A) by redesignating subparagraph (B) as  
6           subparagraph (D); and

7                   (B) by inserting after subparagraph (A)  
8           the following new subparagraphs:

9                   “(B) CERTAIN RIGHTS NOT ENFORCE-  
10           ABLE.—

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



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

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

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

23                  “(iii) NOTICE.—For purposes of this  
24                  paragraph, the Corporation as receiver or  
25                  conservator of an insured depository insti-



1           tution shall be deemed to have notified a  
2           person who is a party to a qualified finan-  
3           cial contract with such depository institu-  
4           tion if the Corporation has taken steps  
5           reasonably calculated to provide notice to  
6           such person by the time specified in sub-  
7           paragraph (A).

8           “(C) TREATMENT OF BRIDGE BANKS.—

9           The following institutions shall not be consid-  
10          ered to be a financial institution for which a  
11          conservator, receiver, trustee in bankruptcy, or  
12          other legal custodian has been appointed or  
13          which is otherwise the subject of a bankruptcy  
14          or insolvency proceeding for purposes of para-  
15          graph (9):

16                 “(i) A bridge bank.

17                 “(ii) A depository institution orga-  
18                 nized by the Corporation, for which a con-  
19                 servator is appointed either—

20                         “(I) immediately upon the orga-  
21                         nization of the institution; or

22                         “(II) at the time of a purchase  
23                         and assumption transaction between  
24                         the depository institution and the Cor-



1                   poration as receiver for a depository  
2                   institution in default.”.

3           (b) INSURED CREDIT UNIONS.—

4                   (1) TRANSFERS OF QUALIFIED FINANCIAL CON-  
5           TRACTS TO FINANCIAL INSTITUTIONS.—Section  
6           207(c)(9) of the Federal Credit Union Act (12  
7           U.S.C. 1787(c)(9)) is amended to read as follows:

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

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

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

21                   “(I) all qualified financial con-  
22           tracts between any person or any af-  
23           filiate of such person and the credit  
24           union in default;



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

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

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

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

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



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

20                   “(C) TRANSFER OF CONTRACTS SUBJECT  
21                   TO THE RULES OF A CLEARING ORGANIZA-  
22                   TION.—In the event that a conservator or liqui-  
23                   dating agent transfers any qualified financial  
24                   contract and related claims, property, and cred-  
25                   it enhancements pursuant to subparagraph



1 (A)(i) and such contract is cleared by or subject  
2 to the rules of a clearing organization, the  
3 clearing organization shall not be required to  
4 accept the transferee as a member by virtue of  
5 the transfer.

6 “(D) DEFINITIONS.—For purposes of this  
7 paragraph—

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

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

18 (2) NOTICE TO QUALIFIED FINANCIAL CON-  
19 TRACT COUNTERPARTIES.—Section 207(c)(10)(A) of  
20 the Federal Credit Union Act (12 U.S.C.  
21 1787(c)(10)(A)) is amended in the material imme-  
22 diately following clause (ii) by striking “the conser-  
23 vator” and all that follows through the period and  
24 inserting the following: “the conservator or liqui-  
25 dating agent shall notify any person who is a party



1 to any such contract of such transfer by 5:00 p.m.  
2 (eastern time) on the business day following the date  
3 of the appointment of the liquidating agent in the  
4 case of a liquidation, or the business day following  
5 such transfer in the case of a conservatorship.”.

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

10 (A) by redesignating subparagraph (B) as  
11 subparagraph (D); and

12 (B) by inserting after subparagraph (A)  
13 the following new subparagraphs:

14 “(B) CERTAIN RIGHTS NOT ENFORCE-  
15 ABLE.—

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



1 agent for the credit union institution (or  
2 the insolvency or financial condition of the  
3 credit union for which the liquidating  
4 agent has been appointed)—

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

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

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



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

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

18                   “(i) A bridge bank.

19                   “(ii) A credit union organized by the  
20                   Board, for which a conservator is ap-  
21                   pointed either—

22                   “(I) immediately upon the orga-  
23                   nization of the credit union; or

24                   “(II) at the time of a purchase  
25                   and assumption transaction between



1 the credit union and the Board as re-  
2 ceiver for a credit union in default.”.

3 **SEC. 5082D. AMENDMENTS RELATING TO DISAFFIRMANCE**  
4 **OR REPUDIATION OF QUALIFIED FINANCIAL**  
5 **CONTRACTS.**

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

9 (1) by redesignating paragraphs (11) through  
10 (15) as paragraphs (12) through (16), respectively;

11 (2) by inserting after paragraph (10) the fol-  
12 lowing new paragraph:

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

20 “(A) disaffirm or repudiate all qualified fi-  
21 nancial contracts between—

22 “(i) any person or any affiliate of  
23 such person; and

24 “(ii) the depository institution in de-  
25 fault; or



1           “(B) disaffirm or repudiate none of the  
2           qualified financial contracts referred to in sub-  
3           paragraph (A) (with respect to such person or  
4           any affiliate of such person).”;

5           (3) by adding at the end the following new  
6           paragraph:

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

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

21                 (1) by redesignating paragraphs (11), (12), and  
22                 (13) as paragraphs (12), (13), and (14), respec-  
23                 tively;

24                 (2) by inserting after paragraph (10) the fol-  
25                 lowing new paragraph:



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

8                   “(A) disaffirm or repudiate all qualified fi-  
9                   nancial contracts between—

10                           “(i) any person or any affiliate of  
11                           such person; and

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

13                           “(B) disaffirm or repudiate none of the  
14                           qualified financial contracts referred to in sub-  
15                           paragraph (A) (with respect to such person or  
16                           any affiliate of such person).”; and

17                           (3) by adding at the end the following new  
18                           paragraph:

19                           “(15) SAVINGS CLAUSE.—The meanings of  
20                           terms used in this subsection are applicable for pur-  
21                           poses of this subsection only, and shall not be con-  
22                           strued or applied so as to challenge or affect the  
23                           characterization, definition, or treatment of any  
24                           similar terms under any other statute, regulation, or  
25                           rule, including the Gramm-Leach-Bliley Act, the



1 Legal Certainty for Bank Products Act of 2000, the  
2 securities laws (as that term is defined in section  
3 (a)(47) of the Securities Exchange Act of 1934),  
4 and the Commodity Exchange Act.”.

5 **SEC. 5082E. CLARIFYING AMENDMENT RELATING TO MAS-**  
6 **TER AGREEMENTS.**

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

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



1                   spect to those transactions that are them-  
2                   selves qualified financial contracts.”.

3           (b)       INSURED       CREDIT       UNIONS.—Section  
4 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C.  
5 1787(c)(8)(D)) is amended by inserting after clause (vi)  
6 (as added by section 5082A(f) of this subchapter) the fol-  
7 lowing new clause:

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



1 **SEC. 5082F. FEDERAL DEPOSIT INSURANCE CORPORATION**  
2 **IMPROVEMENT ACT OF 1991.**

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

6 (1) in paragraph (2)—

7 (A) in subparagraph (A)(ii), by inserting  
8 before the semicolon “, or is exempt from such  
9 registration by order of the Securities and Ex-  
10 change Commission”; and

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

17 (2) in paragraph (6)—

18 (A) by redesignating subparagraphs (B)  
19 through (D) as subparagraphs (C) through (E),  
20 respectively;

21 (B) by inserting after subparagraph (A)  
22 the following new subparagraph:

23 “(B) an uninsured national bank or an un-  
24 insured State bank that is a member of the  
25 Federal Reserve System, if the national bank or  
26 State member bank is not eligible to make ap-



1           plication to become an insured bank under sec-  
2           tion 5 of the Federal Deposit Insurance Act;”;  
3           and

4                   (C) by amending subparagraph (C) (as re-  
5           designated) to read as follows:

6                   “(C) a branch or agency of a foreign bank,  
7           a foreign bank and any branch or agency of the  
8           foreign bank, or the foreign bank that estab-  
9           lished the branch or agency, as those terms are  
10          defined in section 1(b) of the International  
11          Banking Act of 1978;”;

12                   (3) in paragraph (11), by inserting before the  
13          period “and any other clearing organization with  
14          which such clearing organization has a netting con-  
15          tract”;

16                   (4) by amending paragraph (14)(A)(i) to read  
17          as follows:

18                   “(i) means a contract or agreement  
19                  between 2 or more financial institutions,  
20                  clearing organizations, or members that  
21                  provides for netting present or future pay-  
22                  ment obligations or payment entitlements  
23                  (including liquidation or close out values  
24                  relating to such obligations or entitle-



1                   ments) among the parties to the agree-  
2                   ment; and”;

3                   (5) by adding at the end the following new  
4                   paragraph:

5                   “(15) PAYMENT.—The term ‘payment’ means a  
6                   payment of United States dollars, another currency,  
7                   or a composite currency, and a noncash delivery, in-  
8                   cluding a payment or delivery to liquidate an  
9                   unmatured obligation.”.

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

14                  (1) by striking subsection (a) and inserting the  
15                  following:

16                  “(a) GENERAL RULE.—Notwithstanding any other  
17                  provision of State or Federal law (other than paragraphs  
18                  (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
19                  Deposit Insurance Act, paragraphs (8)(E), (8)(F), and  
20                  (10)(B) of section 207(c) of the Federal Credit Union Act,  
21                  or any order authorized under section 5(b)(2) of the Secu-  
22                  rities Investor Protection Act of 1970), the covered con-  
23                  tractual payment obligations and the covered contractual  
24                  payment entitlements between any 2 financial institutions  
25                  shall be netted in accordance with, and subject to the con-



1 ditions of, the terms of any applicable netting contract (ex-  
2 cept as provided in section 561(b)(2) of title 11, United  
3 States Code).”; and

4 (2) by adding at the end the following new sub-  
5 section:

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

19 (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
20 NETTING CONTRACTS.—Section 404 of the Federal De-  
21 posit Insurance Corporation Improvement Act of 1991 (12  
22 U.S.C. 4404) is amended—

23 (1) by striking subsection (a) and inserting the  
24 following:



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

15           (2) by adding at the end the following new sub-  
16 section:

17           “(h) ENFORCEABILITY OF SECURITY AGREE-  
18 MENTS.—The provisions of any security agreement or ar-  
19 rangement or other credit enhancement related to one or  
20 more netting contracts between any 2 members of a clear-  
21 ing organization shall be enforceable in accordance with  
22 their terms (except as provided in section 561(b)(2) of  
23 title 11, United States Code), and shall not be stayed,  
24 avoided, or otherwise limited by any State or Federal law  
25 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-



1 tion 11(e) of the Federal Deposit Insurance Act, para-  
2 graphs (8)(E), (8)(F), and (10)(B) of section 207(e) of  
3 the Federal Credit Union Act, and section 5(b)(2) of the  
4 Securities Investor Protection Act of 1970).”.

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

11 (1) by redesignating section 407 as section  
12 407A; and

13 (2) by inserting after section 406 the following  
14 new section:

15 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
16 **NATIONAL BANKS, UNINSURED FEDERAL**  
17 **BRANCHES AND AGENCIES, CERTAIN UNIN-**  
18 **SURED STATE MEMBER BANKS, AND EDGE**  
19 **ACT CORPORATIONS.**

20 “(a) IN GENERAL.—Notwithstanding any other pro-  
21 vision of law, paragraphs (8), (9), (10), and (11) of section  
22 11(e) of the Federal Deposit Insurance Act shall apply  
23 to an uninsured national bank or uninsured Federal  
24 branch or Federal agency, a corporation chartered under  
25 section 25A of the Federal Reserve Act, or an uninsured



1 State member bank which operates, or operates as, a mul-  
2 tilateral clearing organization pursuant to section 409 of  
3 this Act, except that for such purpose—

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

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



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

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

19          “(c) REGULATORY AUTHORITY.—

20                 “(1) IN GENERAL.—The Comptroller of the  
21          Currency in the case of an uninsured national bank  
22          or uninsured Federal branch or agency and the  
23          Board of Governors of the Federal Reserve System  
24          in the case of a corporation chartered under section  
25          25A of the Federal Reserve Act, or an uninsured



1 State member bank that operates, or operates as, a  
2 multilateral clearing organization pursuant to sec-  
3 tion 409 of this Act, in consultation with the Fed-  
4 eral Deposit Insurance Corporation, may each pro-  
5 mulgate regulations solely to implement this section.

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

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

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

21 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
22 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
23 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
24 RITIES CONTRACT.—Title 11, United States Code, is  
25 amended—



1 (1) in section 101—

2 (A) in paragraph (25)—

3 (i) by striking “means a contract”

4 and inserting “means—

5 “(A) a contract”;

6 (ii) by striking “, or any combination

7 thereof or option thereon;” and inserting

8 “, or any other similar agreement;”; and

9 (iii) by adding at the end the fol-  
10 lowing:

11 “(B) any combination of agreements or  
12 transactions referred to in subparagraphs (A)  
13 and (C);

14 “(C) any option to enter into an agreement  
15 or transaction referred to in subparagraph (A)  
16 or (B);

17 “(D) a master agreement that provides for  
18 an agreement or transaction referred to in sub-  
19 paragraph (A), (B), or (C), together with all  
20 supplements to any such master agreement,  
21 without regard to whether such master agree-  
22 ment provides for an agreement or transaction  
23 that is not a forward contract under this para-  
24 graph, except that such master agreement shall  
25 be considered to be a forward contract under



1           this paragraph only with respect to each agree-  
2           ment or transaction under such master agree-  
3           ment that is referred to in subparagraph (A),  
4           (B), or (C); or

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

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

20          (C) by amending paragraph (47) to read  
21          as follows:

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

24                 “(A) means—



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



1 a date certain not later than 1 year after  
2 such transfer or on demand, against the  
3 transfer of funds;

4 “(ii) any combination of agreements  
5 or transactions referred to in clauses (i)  
6 and (iii);

7 “(iii) an option to enter into an agree-  
8 ment or transaction referred to in clause  
9 (i) or (ii);

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

24 “(v) any security agreement or ar-  
25 rangement or other credit enhancement re-



1           lated to any agreement or transaction re-  
2           ferred to in clause (i), (ii), (iii), or (iv), in-  
3           cluding any guarantee or reimbursement  
4           obligation by or to a repo participant or fi-  
5           nancial participant in connection with any  
6           agreement or transaction referred to in  
7           any such clause, but not to exceed the  
8           damages in connection with any such  
9           agreement or transaction, measured in ac-  
10          cordance with section 562 of this title; and

11           “(B) does not include a repurchase obliga-  
12          tion under a participation in a commercial  
13          mortgage loan;”;

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

18           (E) by amending paragraph (53B) to read  
19          as follows:

20          “(53B) ‘swap agreement’—

21           “(A) means—

22           “(i) any agreement, including the  
23           terms and conditions incorporated by ref-  
24           erence in such agreement, which is—



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

6           “(II) a spot, same day-tomorrow,  
7           tomorrow-next, forward, or other for-  
8           eign exchange or precious metals  
9           agreement;

10          “(III) a currency swap, option,  
11          future, or forward agreement;

12          “(IV) an equity index or equity  
13          swap, option, future, or forward  
14          agreement;

15          “(V) a debt index or debt swap,  
16          option, future, or forward agreement;

17          “(VI) a total return, credit  
18          spread or credit swap, option, future,  
19          or forward agreement;

20          “(VII) a commodity index or a  
21          commodity swap, option, future, or  
22          forward agreement; or

23          “(VIII) a weather swap, weather  
24          derivative, or weather option;



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

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

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

23                  “(iii) any combination of agreements  
24                  or transactions referred to in this subpara-  
25                  graph;



1           “(iv) any option to enter into an  
2 agreement or transaction referred to in  
3 this subparagraph;

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

18           “(vi) any security agreement or ar-  
19 rangement or other credit enhancement re-  
20 lated to any agreements or transactions re-  
21 ferred to in clause (i) through (v), includ-  
22 ing any guarantee or reimbursement obli-  
23 gation by or to a swap participant or fi-  
24 nancial participant in connection with any  
25 agreement or transaction referred to in



1 any such clause, but not to exceed the  
2 damages in connection with any such  
3 agreement or transaction, measured in ac-  
4 cordance with section 562 of this title; and

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

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

21 “(7) ‘securities contract’—

22 “(A) means—

23 “(i) a contract for the purchase, sale,  
24 or loan of a security, a certificate of de-  
25 posit, a mortgage loan or any interest in a



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

13 “(ii) any option entered into on a na-  
14 tional securities exchange relating to for-  
15 eign currencies;

16 “(iii) the guarantee by or to any secu-  
17 rities clearing agency of a settlement of  
18 cash, securities, certificates of deposit,  
19 mortgage loans or interests therein, group  
20 or index of securities, or mortgage loans or  
21 interests therein (including any interest  
22 therein or based on the value thereof), or  
23 option on any of the foregoing, including  
24 an option to purchase or sell any such se-



1                   curity, certificate of deposit, mortgage  
2                   loan, interest, group or index, or option;  
3                   “ (iv) any margin loan;  
4                   “ (v) any other agreement or trans-  
5                   action that is similar to an agreement or  
6                   transaction referred to in this subpara-  
7                   graph;  
8                   “ (vi) any combination of the agree-  
9                   ments or transactions referred to in this  
10                  subparagraph;  
11                  “ (vii) any option to enter into any  
12                  agreement or transaction referred to in  
13                  this subparagraph;  
14                  “ (viii) a master agreement that pro-  
15                  vides for an agreement or transaction re-  
16                  ferred to in clause (i), (ii), (iii), (iv), (v),  
17                  (vi), or (vii), together with all supplements  
18                  to any such master agreement, without re-  
19                  gard to whether the master agreement pro-  
20                  vides for an agreement or transaction that  
21                  is not a securities contract under this sub-  
22                  paragraph, except that such master agree-  
23                  ment shall be considered to be a securities  
24                  contract under this subparagraph only with  
25                  respect to each agreement or transaction



1 under such master agreement that is re-  
2 ferred to in clause (i), (ii), (iii), (iv), (v),  
3 (vi), or (vii); or

4 “(ix) any security agreement or ar-  
5 rangement or other credit enhancement re-  
6 lated to any agreement or transaction re-  
7 ferred to in this subparagraph, including  
8 any guarantee or reimbursement obligation  
9 by or to a stockbroker, securities clearing  
10 agency, financial institution, or financial  
11 participant in connection with any agree-  
12 ment or transaction referred to in this sub-  
13 paragraph, but not to exceed the damages  
14 in connection with any such agreement or  
15 transaction, measured in accordance with  
16 section 562 of this title; and

17 “(B) does not include any purchase, sale,  
18 or repurchase obligation under a participation  
19 in a commercial mortgage loan;”; and  
20 (3) in section 761(4)—

21 (A) by striking “or” at the end of subpara-  
22 graph (D); and

23 (B) by adding at the end the following:



1           “(F) any other agreement or transaction  
2           that is similar to an agreement or transaction  
3           referred to in this paragraph;

4           “(G) any combination of the agreements or  
5           transactions referred to in this paragraph;

6           “(H) any option to enter into an agree-  
7           ment or transaction referred to in this para-  
8           graph;

9           “(I) a master agreement that provides for  
10          an agreement or transaction referred to in sub-  
11          paragraph (A), (B), (C), (D), (E), (F), (G), or  
12          (H), together with all supplements to such mas-  
13          ter agreement, without regard to whether the  
14          master agreement provides for an agreement or  
15          transaction that is not a commodity contract  
16          under this paragraph, except that the master  
17          agreement shall be considered to be a com-  
18          modity contract under this paragraph only with  
19          respect to each agreement or transaction under  
20          the master agreement that is referred to in sub-  
21          paragraph (A), (B), (C), (D), (E), (F), (G), or  
22          (H); or

23          “(J) any security agreement or arrange-  
24          ment or other credit enhancement related to  
25          any agreement or transaction referred to in this



1 paragraph, including any guarantee or reim-  
2 bursement obligation by or to a commodity  
3 broker or financial participant in connection  
4 with any agreement or transaction referred to  
5 in this paragraph, but not to exceed the dam-  
6 ages in connection with any such agreement or  
7 transaction, measured in accordance with sec-  
8 tion 562 of this title;”.

9 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
10 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
11 CHANT.—Section 101 of title 11, United States Code, is  
12 amended—

13 (1) by striking paragraph (22) and inserting  
14 the following:

15 “(22) ‘financial institution’ means—

16 “(A) a Federal reserve bank, or an entity  
17 (domestic or foreign) that is a commercial or  
18 savings bank, industrial savings bank, savings  
19 and loan association, trust company, federally-  
20 insured credit union, or receiver or conservator  
21 for such entity and, when any such Federal re-  
22 serve bank, receiver, conservator or entity is  
23 acting as agent or custodian for a customer in  
24 connection with a securities contract (as defined  
25 in section 741) such customer; or



1           “(B) in connection with a securities con-  
2           tract (as defined in section 741) an investment  
3           company registered under the Investment Com-  
4           pany Act of 1940;”;

5           (2) by inserting after paragraph (22) the fol-  
6           lowing:

7           “(22A) ‘financial participant’ means—

8           “(A) an entity that, at the time it enters  
9           into a securities contract, commodity contract,  
10          swap agreement, repurchase agreement, or for-  
11          ward contract, or at the time of the filing of the  
12          petition, has one or more agreements or trans-  
13          actions described in paragraph (1), (2), (3), (4),  
14          (5), or (6) of section 561(a) with the debtor or  
15          any other entity (other than an affiliate) of a  
16          total gross dollar value of not less than  
17          \$1,000,000,000 in notional or actual principal  
18          amount outstanding on any day during the pre-  
19          vious 15-month period, or has gross mark-to-  
20          market positions of not less than \$100,000,000  
21          (aggregated across counterparties) in one or  
22          more such agreements or transactions with the  
23          debtor or any other entity (other than an affil-  
24          iate) on any day during the previous 15-month  
25          period; or



1           “(B) a clearing organization (as defined in  
2           section 402 of the Federal Deposit Insurance  
3           Corporation Improvement Act of 1991);” and  
4           (3) by striking paragraph (26) and inserting  
5           the following:

6           “(26) ‘forward contract merchant’ means a  
7           Federal reserve bank, or an entity the business of  
8           which consists in whole or in part of entering into  
9           forward contracts as or with merchants in a com-  
10          modity (as defined in section 761) or any similar  
11          good, article, service, right, or interest which is pres-  
12          ently or in the future becomes the subject of dealing  
13          in the forward contract trade;”.

14          (c) DEFINITION OF MASTER NETTING AGREEMENT  
15          AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
16          tion 101 of title 11, United States Code, is amended by  
17          inserting after paragraph (38) the following new para-  
18          graphs:

19                 “(38A) ‘master netting agreement’—

20                         “(A) means an agreement providing for  
21                         the exercise of rights, including rights of net-  
22                         ting, setoff, liquidation, termination, accelera-  
23                         tion, or close out, under or in connection with  
24                         one or more contracts that are described in any  
25                         one or more of paragraphs (1) through (5) of



1 section 561(a), or any security agreement or ar-  
2 rangement or other credit enhancement related  
3 to one or more of the foregoing, including any  
4 guarantee or reimbursement obligation related  
5 to 1 or more of the foregoing; and

6 “(B) if the agreement contains provisions  
7 relating to agreements or transactions that are  
8 not contracts described in paragraphs (1)  
9 through (5) of section 561(a), shall be deemed  
10 to be a master netting agreement only with re-  
11 spect to those agreements or transactions that  
12 are described in any one or more of paragraphs  
13 (1) through (5) of section 561(a);

14 “(38B) ‘master netting agreement participant’  
15 means an entity that, at any time before the filing  
16 of the petition, is a party to an outstanding master  
17 netting agreement with the debtor;”.

18 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
19 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
20 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
21 MENTS UNDER THE AUTOMATIC-STAY.—

22 (1) IN GENERAL.—Section 362(b) of title 11,  
23 United States Code, is amended—



1 (A) in paragraph (6), by inserting “,  
2 pledged to, under the control of,” after “held  
3 by”;

4 (B) in paragraph (7), by inserting “,  
5 pledged to, under the control of,” after “held  
6 by”;

7 (C) by striking paragraph (17) and insert-  
8 ing the following:

9 “(17) under subsection (a), of the setoff by a  
10 swap participant or financial participant of a mutual  
11 debt and claim under or in connection with one or  
12 more swap agreements that constitutes the setoff of  
13 a claim against the debtor for any payment or other  
14 transfer of property due from the debtor under or in  
15 connection with any swap agreement against any  
16 payment due to the debtor from the swap partici-  
17 pant or financial participant under or in connection  
18 with any swap agreement or against cash, securities,  
19 or other property held by, pledged to, under the con-  
20 trol of, or due from such swap participant or finan-  
21 cial participant to margin, guarantee, secure, or set-  
22 tle any swap agreement;”;

23 (D) in paragraph (18) by striking the pe-  
24 riod at the end and inserting “; or”; and



1 (E) by inserting after paragraph (18) the  
2 following new paragraph:

3 “(19) under subsection (a), of the setoff by a  
4 master netting agreement participant of a mutual  
5 debt and claim under or in connection with one or  
6 more master netting agreements or any contract or  
7 agreement subject to such agreements that con-  
8 stitutes the setoff of a claim against the debtor for  
9 any payment or other transfer of property due from  
10 the debtor under or in connection with such agree-  
11 ments or any contract or agreement subject to such  
12 agreements against any payment due to the debtor  
13 from such master netting agreement participant  
14 under or in connection with such agreements or any  
15 contract or agreement subject to such agreements or  
16 against cash, securities, or other property held by,  
17 pledged to, under the control of, or due from such  
18 master netting agreement participant to margin,  
19 guarantee, secure, or settle such agreements or any  
20 contract or agreement subject to such agreements,  
21 to the extent that such participant is eligible to exer-  
22 cise such offset rights under paragraph (6), (7), or  
23 (17) for each individual contract covered by the mas-  
24 ter netting agreement in issue.”.



1           (2) LIMITATION.—Section 362 of title 11,  
2           United States Code, is amended by adding at the  
3           end the following:

4           “(i) The exercise of rights not subject to the stay  
5           arising under subsection (a) pursuant to paragraph (6),  
6           (7), (17), or (19) of subsection (b) shall not be stayed  
7           by any order of a court or administrative agency in any  
8           proceeding under this title.”.

9           (e) LIMITATION OF AVOIDANCE POWERS UNDER  
10          MASTER NETTING AGREEMENT.—Section 546 of title 11,  
11          United States Code, is amended—

12                 (1) in subsection (g) (as added by section 103  
13                 of Public Law 101–311)—

14                         (A) by striking “under a swap agreement”;

15                         (B) by striking “in connection with a swap  
16                         agreement” and inserting “under or in connec-  
17                         tion with any swap agreement”; and

18                         (C) by inserting “or financial participant”  
19                         after “swap participant” each place such term  
20                         appears; and

21                 (2) by adding at the end the following:

22                 “(j) Notwithstanding sections 544, 545, 547,  
23                 548(a)(1)(B), and 548(b) the trustee may not avoid a  
24                 transfer made by or to a master netting agreement partici-  
25                 pant under or in connection with any master netting



1 agreement or any individual contract covered thereby that  
2 is made before the commencement of the case, except  
3 under section 548(a)(1)(A) and except to the extent that  
4 the trustee could otherwise avoid such a transfer made  
5 under an individual contract covered by such master net-  
6 ting agreement.”.

7 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
8 AGREEMENTS.—Section 548(d)(2) of title 11, United  
9 States Code, is amended—

10 (1) in subparagraph (C), by striking “and” at  
11 the end;

12 (2) in subparagraph (D), by striking the period  
13 and inserting “; and”; and

14 (3) by adding at the end the following new sub-  
15 paragraph:

16 “(E) a master netting agreement participant  
17 that receives a transfer in connection with a master  
18 netting agreement or any individual contract covered  
19 thereby takes for value to the extent of such trans-  
20 fer, except that, with respect to a transfer under any  
21 individual contract covered thereby, to the extent  
22 that such master netting agreement participant oth-  
23 erwise did not take (or is otherwise not deemed to  
24 have taken) such transfer for value.”.



1 (g) TERMINATION OR ACCELERATION OF SECURITIES  
2 CONTRACTS.—Section 555 of title 11, United States Code,  
3 is amended—

4 (1) by amending the section heading to read as  
5 follows:

6 **“§ 555. Contractual right to liquidate, terminate, or  
7 accelerate a securities contract”;**

8 (2) in the first sentence, by striking “liquida-  
9 tion” and inserting “liquidation, termination, or ac-  
10 celeration”.

11 (h) TERMINATION OR ACCELERATION OF COMMOD-  
12 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
13 United States Code, is amended—

14 (1) by amending the section heading to read as  
15 follows:

16 **“§ 556. Contractual right to liquidate, terminate, or  
17 accelerate a commodities contract or for-  
18 ward contract”;**

19 (2) in the first sentence, by striking “liquida-  
20 tion” and inserting “liquidation, termination, or ac-  
21 celeration”; and

22 (3) in the second sentence, by striking “As  
23 used” and all that follows through “right,” and in-  
24 serting “As used in this section, the term ‘contrac-  
25 tual right’ includes a right set forth in a rule or



1 bylaw of a derivatives clearing organization (as de-  
2 fined in the Commodity Exchange Act), a multilat-  
3 eral clearing organization (as defined in the Federal  
4 Deposit Insurance Corporation Improvement Act of  
5 1991), a national securities exchange, a national se-  
6 curities association, a securities clearing agency, a  
7 contract market designated under the Commodity  
8 Exchange Act, a derivatives transaction execution  
9 facility registered under the Commodity Exchange  
10 Act, or a board of trade (as defined in the Com-  
11 modity Exchange Act) or in a resolution of the gov-  
12 erning board thereof and a right,”.

13 (i) TERMINATION OR ACCELERATION OF REPUR-  
14 CHASE AGREEMENTS.—Section 559 of title 11, United  
15 States Code, is amended—

16 (1) by amending the section heading to read as  
17 follows:

18 “§ 559. **Contractual right to liquidate, terminate, or**  
19 **accelerate a repurchase agreement”;**

20 (2) in the first sentence, by striking “liquida-  
21 tion” and inserting “liquidation, termination, or ac-  
22 celeration”; and

23 (3) in the third sentence, by striking “As used”  
24 and all that follows through “right,” and inserting  
25 “As used in this section, the term ‘contractual right’



1 includes a right set forth in a rule or bylaw of a de-  
2 rivatives clearing organization (as defined in the  
3 Commodity Exchange Act), a multilateral clearing  
4 organization (as defined in the Federal Deposit In-  
5 surance Corporation Improvement Act of 1991), a  
6 national securities exchange, a national securities as-  
7 sociation, a securities clearing agency, a contract  
8 market designated under the Commodity Exchange  
9 Act, a derivatives transaction execution facility reg-  
10 istered under the Commodity Exchange Act, or a  
11 board of trade (as defined in the Commodity Ex-  
12 change Act) or in a resolution of the governing  
13 board thereof and a right.”.

14 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
15 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
16 States Code, is amended—

17 (1) by amending the section heading to read as  
18 follows:

19 “§ 560. **Contractual right to liquidate, terminate, or**  
20 **accelerate a swap agreement”;**

21 (2) in the first sentence, by striking “termi-  
22 nation of a swap agreement” and inserting “liquida-  
23 tion, termination, or acceleration of one or more  
24 swap agreements”;



1           (3) by striking “in connection with any swap  
2           agreement” and inserting “in connection with the  
3           termination, liquidation, or acceleration of one or  
4           more swap agreements”; and

5           (4) in the second sentence, by striking “As  
6           used” and all that follows through “right,” and in-  
7           serting “As used in this section, the term ‘contractual  
8           right’ includes a right set forth in a rule or  
9           bylaw of a derivatives clearing organization (as de-  
10          fined in the Commodity Exchange Act), a multilat-  
11          eral clearing organization (as defined in the Federal  
12          Deposit Insurance Corporation Improvement Act of  
13          1991), a national securities exchange, a national se-  
14          curities association, a securities clearing agency, a  
15          contract market designated under the Commodity  
16          Exchange Act, a derivatives transaction execution  
17          facility registered under the Commodity Exchange  
18          Act, or a board of trade (as defined in the Com-  
19          modity Exchange Act) or in a resolution of the gov-  
20          erning board thereof and a right,”.

21          (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
22          OFFSET UNDER A MASTER NETTING AGREEMENT AND  
23          ACROSS CONTRACTS.—



1           (1) IN GENERAL.—Title 11, United States  
2           Code, is amended by inserting after section 560 the  
3           following:

4           **“§ 561. Contractual right to terminate, liquidate, ac-**  
5                       **celerate, or offset under a master netting**  
6                       **agreement and across contracts; pro-**  
7                       **ceedings under Section 304**

8           “(a) Subject to subsection (b), the exercise of any  
9           contractual right, because of a condition of the kind speci-  
10          fied in section 365(e)(1), to cause the termination, liquida-  
11          tion, or acceleration of or to offset or net termination val-  
12          ues, payment amounts, or other transfer obligations aris-  
13          ing under or in connection with one or more (or the termi-  
14          nation, liquidation, or acceleration of one or more)—

15               “(1) securities contracts, as defined in section  
16               741(7);

17               “(2) commodity contracts, as defined in section  
18               761(4);

19               “(3) forward contracts;

20               “(4) repurchase agreements;

21               “(5) swap agreements; or

22               “(6) master netting agreements,

23          shall not be stayed, avoided, or otherwise limited by oper-  
24          ation of any provision of this title or by any order of a



1 court or administrative agency in any proceeding under  
2 this title.

3 “(b)(1) A party may exercise a contractual right de-  
4 scribed in subsection (a) to terminate, liquidate, or accel-  
5 erate only to the extent that such party could exercise such  
6 a right under section 555, 556, 559, or 560 for each indi-  
7 vidual contract covered by the master netting agreement  
8 in issue.

9 “(2) If a debtor is a commodity broker subject to sub-  
10 chapter IV of chapter 7—

11 “(A) a party may not net or offset an obligation  
12 to the debtor arising under, or in connection with,  
13 a commodity contract traded on or subject to the  
14 rules of a contract market designated under the  
15 Commodity Exchange Act or a derivatives trans-  
16 action execution facility registered under the Com-  
17modity Exchange Act against any claim arising  
18 under, or in connection with, other instruments, con-  
19 tracts, or agreements listed in subsection (a) except  
20 to the extent that the party has positive net equity  
21 in the commodity accounts at the debtor, as cal-  
22 culated under such subchapter; and

23 “(B) another commodity broker may not net or  
24 offset an obligation to the debtor arising under, or  
25 in connection with, a commodity contract entered



1 into or held on behalf of a customer of the debtor  
2 and traded on or subject to the rules of a contract  
3 market designated under the Commodity Exchange  
4 Act or a derivatives transaction execution facility  
5 registered under the Commodity Exchange Act  
6 against any claim arising under, or in connection  
7 with, other instruments, contracts, or agreements  
8 listed in subsection (a).

9 “(3) No provision of subparagraph (A) or (B) of  
10 paragraph (2) shall prohibit the offset of claims and obli-  
11 gations that arise under—

12 “(A) a cross-margining agreement or similar  
13 arrangement that has been approved by the Com-  
14modity Futures Trading Commission or submitted  
15 to the Commodity Futures Trading Commission  
16 under paragraph (1) or (2) of section 5c(c) of the  
17 Commodity Exchange Act and has not been abro-  
18gated or rendered ineffective by the Commodity Fu-  
19tures Trading Commission; or

20 “(B) any other netting agreement between a  
21 clearing organization (as defined in section 761) and  
22 another entity that has been approved by the Com-  
23modity Futures Trading Commission.

24 “(c) As used in this section, the term ‘contractual  
25 right’ includes a right set forth in a rule or bylaw of a



1 derivatives clearing organization (as defined in the Com-  
2 modity Exchange Act), a multilateral clearing organiza-  
3 tion (as defined in the Federal Deposit Insurance Cor-  
4 poration Improvement Act of 1991), a national securities  
5 exchange, a national securities association, a securities  
6 clearing agency, a contract market designated under the  
7 Commodity Exchange Act, a derivatives transaction execu-  
8 tion facility registered under the Commodity Exchange  
9 Act, or a board of trade (as defined in the Commodity  
10 Exchange Act) or in a resolution of the governing board  
11 thereof, and a right, whether or not evidenced in writing,  
12 arising under common law, under law merchant, or by rea-  
13 son of normal business practice.

14 “(d) Any provisions of this title relating to securities  
15 contracts, commodity contracts, forward contracts, repur-  
16 chase agreements, swap agreements, or master netting  
17 agreements shall apply in a case under section 304, so  
18 that enforcement of contractual provisions of such con-  
19 tracts and agreements in accordance with their terms will  
20 not be stayed or otherwise limited by operation of any pro-  
21 vision of this title or by order of a court in any case under  
22 this title, and to limit avoidance powers to the same extent  
23 as in a proceeding under chapter 7 or 11 of this title (such  
24 enforcement not to be limited based on the presence or  
25 absence of assets of the debtor in the United States).”.



1           (2) CONFORMING AMENDMENT.—The table of  
2 sections for chapter 5 of title 11, United States  
3 Code, is amended by inserting after the item relating  
4 to section 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a  
master netting agreement and across contracts; proceedings  
under section 304.”.

5           (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
6 United States Code, is amended by inserting after section  
7 766 the following:

8 **“§ 767. Commodity broker liquidation and forward**  
9 **contract merchants, commodity brokers,**  
10 **stockbrokers, financial institutions, fi-**  
11 **nancial participants, securities clearing**  
12 **agencies, swap participants, repo partici-**  
13 **pants, and master netting agreement par-**  
14 **ticipants**

15           “Notwithstanding any other provision of this title,  
16 the exercise of rights by a forward contract merchant,  
17 commodity broker, stockbroker, financial institution, fi-  
18 nancial participant, securities clearing agency, swap par-  
19 ticipant, repo participant, or master netting agreement  
20 participant under this title shall not affect the priority of  
21 any unsecured claim it may have after the exercise of such  
22 rights.”.



1 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
2 United States Code, is amended by inserting after section  
3 752 the following:

4 **“§ 753. Stockbroker liquidation and forward contract**  
5 **merchants, commodity brokers, stock-**  
6 **brokers, financial institutions, financial**  
7 **participants, securities clearing agencies,**  
8 **swap participants, repo participants, and**  
9 **master netting agreement participants**

10 “Notwithstanding any other provision of this title,  
11 the exercise of rights by a forward contract merchant,  
12 commodity broker, stockbroker, financial institution, secu-  
13 rities clearing agency, swap participant, repo participant,  
14 financial participant, or master netting agreement partici-  
15 pant under this title shall not affect the priority of any  
16 unsecured claim it may have after the exercise of such  
17 rights.”.

18 (n) SETOFF.—Section 553 of title 11, United States  
19 Code, is amended—

20 (1) in subsection (a)(2)(B)(ii), by inserting be-  
21 fore the semicolon the following: “(except for a  
22 setoff of a kind described in section 362(b)(6),  
23 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559,  
24 560, or 561)”;



1           (2) in subsection (a)(3)(C), by inserting before  
2           the period the following: “(except for a setoff of a  
3           kind described in section 362(b)(6), 362(b)(7),  
4           362(b)(17), 362(b)(19), 555, 556, 559, 560, or 561  
5           of this title)”;

6           (3) in subsection (b)(1), by striking  
7           “362(b)(14),” and inserting “362(b)(17),  
8           362(b)(19), 555, 556, 559, 560, 561.”.

9           (o) SECURITIES CONTRACTS, COMMODITY CON-  
10          TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
11          States Code, is amended—

12           (1) in section 362(b)(6), by striking “financial  
13           institutions,” each place such term appears and in-  
14           serting “financial institution, financial participant,”;

15           (2) in sections 362(b)(7) and 546(f), by insert-  
16           ing “or financial participant” after “repo partici-  
17           pant” each place such term appears;

18           (3) in section 546(e), by inserting “financial  
19           participant,” after “financial institution,”;

20           (4) in section 548(d)(2)(B), by inserting “fi-  
21           nancial participant,” after “financial institution,”;

22           (5) in section 548(d)(2)(C), by inserting “or fi-  
23           nancial participant” after “repo participant”;

24           (6) in section 548(d)(2)(D), by inserting “or fi-  
25           nancial participant” after “swap participant”;



1 (7) in section 555—

2 (A) by inserting “financial participant,”  
3 after “financial institution,”; and

4 (B) by striking the second sentence and in-  
5 serting the following: “As used in this section,  
6 the term ‘contractual right’ includes a right set  
7 forth in a rule or bylaw of a derivatives clearing  
8 organization (as defined in the Commodity Ex-  
9 change Act), a multilateral clearing organiza-  
10 tion (as defined in the Federal Deposit Insur-  
11 ance Corporation Improvement Act of 1991), a  
12 national securities exchange, a national securi-  
13 ties association, a securities clearing agency, a  
14 contract market designated under the Com-  
15modity Exchange Act, a derivatives transaction  
16 execution facility registered under the Com-  
17modity Exchange Act, or a board of trade (as  
18 defined in the Commodity Exchange Act), or in  
19 a resolution of the governing board thereof, and  
20 a right, whether or not in writing, arising under  
21 common law, under law merchant, or by reason  
22 of normal business practice”;

23 (8) in section 556, by inserting “, financial par-  
24 ticipant,” after “commodity broker”;



1           (9) in section 559, by inserting “or financial  
2           participant” after “repo participant” each place  
3           such term appears; and

4           (10) in section 560, by inserting “or financial  
5           participant” after “swap participant”.

6           (p) CONFORMING AMENDMENTS.—Title 11, United  
7           States Code, is amended—

8           (1) in the table of sections for chapter 5—

9           (A) by amending the items relating to sec-  
10          tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-  
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-  
tract or forward contract.”;

11          and

12          (B) by amending the items relating to sec-  
13          tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase  
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-  
ment.”;

14          and

15          (2) in the table of sections for chapter 7—

16          (A) by inserting after the item relating to  
17          section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-  
modity brokers, stockbrokers, financial institutions, financial  
participants, securities clearing agencies, swap participants,  
repo participants, and master netting agreement participants.”;

18          and



1 (B) by inserting after the item relating to  
2 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity bro-  
kers, stockbrokers, financial institutions, financial participants,  
securities clearing agencies, swap participants, repo partici-  
pants, and master netting agreement participants.”.

3 **SEC. 5082H. RECORDKEEPING REQUIREMENTS.**

4 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

5 Section 11(e)(8) of the Federal Deposit Insurance Act (12  
6 U.S.C. 1821(e)(8)) is amended by adding at the end the  
7 following new subparagraph:

8 “(H) RECORDKEEPING REQUIREMENTS.—

9 The Corporation, in consultation with the ap-  
10 propriate Federal banking agencies and the Na-  
11 tional Credit Union Administration Board, may  
12 prescribe regulations requiring more detailed  
13 recordkeeping by any insured depository institu-  
14 tion with respect to qualified financial contracts  
15 (including market valuations) only if such in-  
16 sured depository institution is in a troubled  
17 condition (as such term is defined by the Cor-  
18 poration pursuant to section 32).”.

19 (b) INSURED CREDIT UNIONS.—Section 207(c)(8) of  
20 the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
21 amended by adding at the end the following new subpara-  
22 graph:



1                   “(H) RECORDKEEPING REQUIREMENTS.—  
2                   The Board, in consultation with the appropriate  
3                   Federal banking agencies, may prescribe regula-  
4                   tions requiring more detailed recordkeeping by  
5                   any insured credit union with respect to quali-  
6                   fied financial contracts (including market valu-  
7                   ations) only if such insured credit union is in  
8                   a troubled condition (as such term is defined by  
9                   the Board pursuant to section 212).”.

10 **SEC. 5082I. EXEMPTIONS FROM CONTEMPORANEOUS EXE-**  
11 **CUTION REQUIREMENT.**

12                   Section 13(e)(2) of the Federal Deposit Insurance  
13 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

14                   “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
15 EXECUTION REQUIREMENT.—An agreement to pro-  
16 vide for the lawful collateralization of—

17                   “(A) deposits of, or other credit extension  
18 by, a Federal, State, or local governmental enti-  
19 ty, or of any depositor referred to in section  
20 11(a)(2), including an agreement to provide col-  
21 lateral in lieu of a surety bond;

22                   “(B) bankruptcy estate funds pursuant to  
23 section 345(b)(2) of title 11, United States  
24 Code;



1           “(C) extensions of credit, including any  
2           overdraft, from a Federal reserve bank or Fed-  
3           eral home loan bank; or

4           “(D) one or more qualified financial con-  
5           tracts, as defined in section 11(e)(8)(D),  
6           shall not be deemed invalid pursuant to paragraph  
7           (1)(B) solely because such agreement was not exe-  
8           cuted contemporaneously with the acquisition of the  
9           collateral or because of pledges, delivery, or substi-  
10          tution of the collateral made in accordance with such  
11          agreement.”.

12 **SEC. 5082J. DAMAGE MEASURE.**

13          (a) IN GENERAL.—Title 11, United States Code, is  
14          amended—

15                 (1) by inserting after section 561, as added by  
16                 section 5082G(k)(1) of this subchapter, the fol-  
17                 lowing:

18 **“§ 562. Timing of damage measurement in connection**  
19                 **with swap agreements, securities con-**  
20                 **tracts, forward contracts, commodity con-**  
21                 **tracts, repurchase agreements, and mas-**  
22                 **ter netting agreements**

23                 “(a) If the trustee rejects a swap agreement, securi-  
24                 ties contract (as defined in section 741), forward contract,  
25                 commodity contract (as defined in section 761), repur-



1 chase agreement, or master netting agreement pursuant  
2 to section 365(a), or if a forward contract merchant,  
3 stockbroker, financial institution, securities clearing agen-  
4 cy, repo participant, financial participant, master netting  
5 agreement participant, or swap participant liquidates, ter-  
6 minates, or accelerates such contract or agreement, dam-  
7 ages shall be measured as of the earlier of—

8           “(1) the date of such rejection; or

9           “(2) the date or dates of such liquidation, ter-  
10 mination, or acceleration.

11          “(b) If there are not any commercially reasonable de-  
12 terminants of value as of any date referred to in para-  
13 graph (1) or (2) of subsection (a), damages shall be meas-  
14 ured as of the earliest subsequent date or dates on which  
15 there are commercially reasonable determinants of value.

16          “(c) For the purposes of subsection (b), if damages  
17 are not measured as of the date or dates of rejection, liq-  
18 uidation, termination, or acceleration, and the forward  
19 contract merchant, stockbroker, financial institution, secu-  
20 rities clearing agency, repo participant, financial partici-  
21 pant, master netting agreement participant, or swap par-  
22 ticipant or the trustee objects to the timing of the meas-  
23 urement of damages—

24           “(1) the trustee, in the case of an objection by  
25          a forward contract merchant, stockbroker, financial



1 institution, securities clearing agency, repo partici-  
2 pant, financial participant, master netting agree-  
3 ment participant, or swap participant; or

4 “(2) the forward contract merchant, stock-  
5 broker, financial institution, securities clearing agen-  
6 cy, repo participant, financial participant, master  
7 netting agreement participant, or swap participant,  
8 in the case of an objection by the trustee,

9 has the burden of proving that there were no commercially  
10 reasonable determinants of value as of such date or  
11 dates.”; and

12 (2) in the table of sections for chapter 5, by in-  
13 serting after the item relating to section 561 (as  
14 added by section 5082G(k)(2) of this subchapter)  
15 the following new item:

“562. Timing of damage measure in connection with swap agreements, securi-  
ties contracts, forward contracts, commodity contracts, repur-  
chase agreements, or master netting agreements.”.

16 (b) CLAIMS ARISING FROM REJECTION.—Section  
17 502(g) of title 11, United States Code, is amended—

18 (1) by inserting “(1)” after “(g)”; and

19 (2) by adding at the end the following:

20 “(2) A claim for damages calculated in accordance  
21 with section 562 of this title shall be allowed under sub-  
22 section (a), (b), or (c), or disallowed under subsection (d)  
23 or (e), as if such claim had arisen before the date of the  
24 filing of the petition.”.



1 **SEC. 5082K. SIPC STAY.**

2 Section 5(b)(2) of the Securities Investor Protection  
3 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
4 at the end the following new subparagraph:

5 “(C) EXCEPTION FROM STAY.—

6 “(i) Notwithstanding section 362 of  
7 title 11, United States Code, neither the  
8 filing of an application under subsection  
9 (a)(3) nor any order or decree obtained by  
10 SIPC from the court shall operate as a  
11 stay of any contractual rights of a creditor  
12 to liquidate, terminate, or accelerate a se-  
13 curities contract, commodity contract, for-  
14 ward contract, repurchase agreement, swap  
15 agreement, or master netting agreement,  
16 as those terms are defined in sections 101,  
17 741, and 761 of title 11, United States  
18 Code, to offset or net termination values,  
19 payment amounts, or other transfer obliga-  
20 tions arising under or in connection with  
21 one or more of such contracts or agree-  
22 ments, or to foreclose on any cash collat-  
23 eral pledged by the debtor, whether or not  
24 with respect to one or more of such con-  
25 tracts or agreements.



1           “(ii) Notwithstanding clause (i), such  
2 application, order, or decree may operate  
3 as a stay of the foreclosure on, or disposi-  
4 tion of, securities collateral pledged by the  
5 debtor, whether or not with respect to one  
6 or more of such contracts or agreements,  
7 securities sold by the debtor under a repur-  
8 chase agreement, or securities lent under a  
9 securities lending agreement.

10           “(iii) As used in this subparagraph,  
11 the term ‘contractual right’ includes a  
12 right set forth in a rule or bylaw of a na-  
13 tional securities exchange, a national secu-  
14 rities association, or a securities clearing  
15 agency, a right set forth in a bylaw of a  
16 clearing organization or contract market or  
17 in a resolution of the governing board  
18 thereof, and a right, whether or not in  
19 writing, arising under common law, under  
20 law merchant, or by reason of normal busi-  
21 ness practice.”.

22 **SEC. 5082L. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
23 **TER 9.**

24           Section 901(a) of title 11, United States Code, is  
25 amended—



1 (1) by inserting “555, 556,” after “553,”; and

2 (2) by inserting “559, 560, 561, 562” after

3 “557,”.

4 **SEC. 5082M. EFFECTIVE DATE; APPLICATION OF AMEND-**  
5 **MENTS.**

6 (a) EFFECTIVE DATE.—This subchapter shall take  
7 effect on the date of enactment of this Act.

8 (b) APPLICATION OF AMENDMENTS.—The amend-  
9 ments made by this subchapter shall apply with respect  
10 to cases commenced or appointments made under any  
11 Federal or State law on or after the date of enactment  
12 of this Act, but shall not apply with respect to cases com-  
13 menced or appointments made under any Federal or State  
14 law before the date of enactment of this Act.

15 **SEC. 5082N. SAVINGS CLAUSE.**

16 The meanings of terms used in this subchapter are  
17 applicable for purposes of this subchapter only, and shall  
18 not be construed or applied so as to challenge or affect  
19 the characterization, definition, or treatment of any simi-  
20 lar terms under any other statute, regulation, or rule, in-  
21 cluding the Gramm-Leach-Bliley Act, the Legal Certainty  
22 for Bank Products Act of 2000, the securities laws (as  
23 that term is defined in section 3(a)(47) of the Securities  
24 Exchange Act of 1934), and the Commodity Exchange  
25 Act.





1           “(ii) to ensure prompt, accurate, and safe  
2           clearance and settlement of transactions in se-  
3           curities (other than exempted securities); or

4           “(iii) to reduce, eliminate, or prevent the  
5           substantial disruption by the emergency of (I)  
6           securities markets (other than markets in ex-  
7           empted securities), investment companies, or  
8           any other significant portion or segment of such  
9           markets, or (II) the transmission or processing  
10          of securities transactions (other than trans-  
11          actions in exempted securities).

12          “(B) An order of the Commission under this  
13          paragraph (2) shall continue in effect for the period  
14          specified by the Commission, and may be extended.  
15          Except as provided in subparagraph (C), the Com-  
16          mission’s action may not continue in effect for more  
17          than 30 business days, including extensions.

18          “(C) An order of the Commission under this  
19          paragraph (2) may be extended to continue in effect  
20          for more than 30 business days if, at the time of the  
21          extension, the Commission finds that the emergency  
22          still exists and determines that the continuation of  
23          the order beyond 30 business days is necessary in  
24          the public interest and for the protection of investors  
25          to attain an objective described in clause (i), (ii), or



1 (iii) of subparagraph (A). In no event shall an order  
2 of the Commission under this paragraph (2) con-  
3 tinue in effect for more than 90 calendar days.

4 “(D) If the actions described in subparagraph  
5 (A) involve a security futures product, the Commis-  
6 sion shall consult with and consider the views of the  
7 Commodity Futures Trading Commission. In exer-  
8 cising its authority under this paragraph, the Com-  
9 mission shall not be required to comply with the pro-  
10 visions of section 553 of title 5, United States Code,  
11 or with the provisions of section 19(c) of this title.

12 “(E) Notwithstanding the exclusion of exempt-  
13 ed securities (and markets therein) from the Com-  
14 mission’s authority under subparagraph (A), the  
15 Commission may use such authority to take action  
16 to alter, supplement, suspend, or impose require-  
17 ments or restrictions with respect to clearing agen-  
18 cies for transactions in such exempted securities. In  
19 taking any action under this subparagraph, the  
20 Commission shall consult with and consider the  
21 views of the Secretary of the Treasury.”

22 (b) CONSULTATION; DEFINITION OF EMERGENCY.—  
23 Section 12(k) of the Securities Exchange Act of 1934 (15  
24 U.S.C. 78l(k)) is further amended by striking paragraph  
25 (6) and inserting the following:



1           “(6) CONSULTATION.—Prior to taking any ac-  
2           tion described in paragraph (1)(B), the Commission  
3           shall consult with and consider the views of the Sec-  
4           retary of the Treasury, Board of Governors of the  
5           Federal Reserve System, and the Commodity Fu-  
6           tures Trading Commission, unless such consultation  
7           is impracticable in light of the emergency.

8           “(7) DEFINITIONS.—

9           “(A) EMERGENCY.—For purposes of this  
10          subsection, the term ‘emergency’ means—

11                   “(i) a major market disturbance char-  
12                   acterized by or constituting—

13                           “(I) sudden and excessive fluc-  
14                           tuations of securities prices generally,  
15                           or a substantial threat thereof, that  
16                           threaten fair and orderly markets; or

17                           “(II) a substantial disruption of  
18                           the safe or efficient operation of the  
19                           national system for clearance and set-  
20                           tlement of transactions in securities,  
21                           or a substantial threat thereof; or

22                   “(ii) a major disturbance that sub-  
23                   stantially disrupts, or threatens to substan-  
24                   tially disrupt—



1                   “(I) the functioning of securities  
2                   markets, investment companies, or  
3                   any other significant portion or seg-  
4                   ment of the securities markets; or

5                   “(II) the transmission or proc-  
6                   essing of securities transactions.

7                   “(B) SECURITIES LAWS.—Notwithstanding  
8                   section 3(a)(47), for purposes of this sub-  
9                   section, the term ‘securities laws’ does not in-  
10                  clude the Public Utility Holding Company Act  
11                  of 1935 (15 U.S.C. 79a et seq.).”.

12 **SEC. 5088. PARALLEL AUTHORITY OF THE SECRETARY OF**  
13                   **THE TREASURY WITH RESPECT TO GOVERN-**  
14                   **MENT SECURITIES.**

15                  Section 15C of the Securities Exchange Act of 1934  
16                  (15 U.S.C. 78o-5) is amended by adding at the end the  
17                  following new subsection:

18                  “(h) EMERGENCY AUTHORITY.—The Secretary may  
19                  by order take any action with respect to a matter or action  
20                  subject to regulation by the Secretary under this section,  
21                  or the rules of the Secretary thereunder, involving a gov-  
22                  ernment security or a market therein (or significant por-  
23                  tion or segment of that market), that the Commission may  
24                  take under section 12(k)(2) of this title with respect to  
25                  transactions in securities (other than exempted securities)



1 or a market therein (or significant portion or segment of  
2 that market).”.

3 **Subtitle H—Other Matters**

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

