Senior executive. The term "senior executive" means any person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company, whether or not: The person has an official title; the title designates the officer an assistant; or the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the secretary, and the treasurer or chief financial officer, general partner and manager of a company are considered senior executives, unless the person is excluded, by resolution of the board of directors, the bylaws, the operating agreement or the partnership agreement of the company, from participation (other than in the capacity of a director) in major policymaking functions of the company, and the person does not actually participate therein.

Subsidiary. The term "subsidiary" means any company which is controlled by another company at the time of, or immediately prior to, the appointment of receiver of the covered financial company.

§ 380.5 Treatment of personal service agreements.

(a) For the purposes of this section, the term "personal service agreement" means a written agreement between an employee and a covered financial company or a bridge financial company setting forth the terms of employment. This term also includes an agreement between any group or class of employees and a covered financial company, or a bridge financial company, including, without limitation, a collective bargaining agreement.

(b)(1) If before repudiation or disaffirmance of a personal service agreement, the Corporation as receiver of a covered financial company, or a bridge financial company accepts performance of services rendered under such agreement, then:

(i) The terms and conditions of such agreement shall apply to the performance of such services; and

(ii) Any payments for the services accepted by the Corporation as receiver shall be treated as an administrative expense of the receiver.

(2) If a bridge financial company accepts performance of services rendered under such agreement, then the terms and conditions of such agreement shall apply to the performance of such services.

(c) No party acquiring a covered financial company or any operational unit, subsidiary or assets thereof from the Corporation as receiver or from any bridge financial company shall be bound by a personal service agreement unless the acquiring party expressly assumes the personal service agreement.

(d) The acceptance by the Corporation as receiver for a covered financial company, or by any bridge financial company or the Corporation as receiver for a bridge financial company of services subject to a personal service agreement shall not limit or impair the authority of the receiver to disaffirm or repudiate any personal service agreement in the manner provided for the disaffirmance or repudiation of any agreement under 12 U.S.C. 5390(c).

(e) Paragraph (b) of this section shall not apply to any personal service agreement with any senior executive or director of the covered financial company or covered subsidiary, nor shall it in any way limit or impair the ability of the receiver to recover compensation from any senior executive or director of a covered financial company under 12 U.S.C. 5390 and the regulations promulgated thereunder.

§ 380.4 [Reserved]

§ 380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.

The Corporation as receiver shall distribute the value realized from the liquidation, transfer, sale or other disposition of the direct or indirect subsidiaries of an insurance company, that are not themselves insurance companies, solely in accordance with the
§ 380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.

(a) In the event that the Corporation makes funds available to a covered financial company that is an insurance company or to any covered subsidiary of an insurance company, or enters into any other transaction with respect to such covered entity under 12 U.S.C. 5384(d), the Corporation will exercise its right to take liens on any or all assets of the covered entities receiving such funds to secure repayment of any such transactions only when the Corporation, in its sole discretion, determines that:

(1) Taking such lien is necessary for the orderly liquidation of the entity; and

(2) Taking such lien will not either unduly impede or delay the liquidation or rehabilitation of such insurance company, or the recovery by its policyholders.

(b) This section shall not be construed to restrict or impair the ability of the Corporation to take a lien on any or all of the assets of any covered financial company or covered subsidiary in order to secure financing provided by the Corporation or the receiver in connection with the sale or transfer of the covered financial company or covered subsidiary or any or all of the assets of such covered entity.

[76 FR 41640, July 15, 2011]

§ 380.7 Recoupment of compensation from senior executives and directors.

(a) Substantially responsible. The Corporation, as receiver of a covered financial company, may file an action to recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply. A senior executive or director shall be deemed to be substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act if he or she:

(1) Failed to conduct his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances, and

(2) As a result, individually or collectively, caused a loss to the covered financial company that materially contributed to the failure of the covered financial company under the facts and circumstances.

(b) Presumptions. The following presumptions shall apply for purposes of assessing whether a senior executive or director is substantially responsible for the failed condition of a covered financial company:

(i) It shall be presumed that a senior executive or director is substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act under any of the following circumstances:

(1) The senior executive or director served as the chairman of the board of directors, chief executive officer, president, chief financial officer, or in any other similar role regardless of his or her title if in this role he or she had responsibility for the strategic, policy-making, or company-wide operational decisions of the covered financial company prior to the date that it was placed into receivership under the orderly liquidation authority of the Dodd-Frank Act; or

(2) The senior executive or director was removed from the management of the covered financial company under 12 U.S.C. 5386(4); or

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