

§ 149.1 Authority and purpose.

(a) *Authority.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) and the Secretary of the Department of the Treasury (Treasury) under section 210(n)(7) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act).

(b) *Purpose.* The purpose of this part is to issue implementing regulations as required by the Act. The part governs the calculation of the maximum obligation limitation which limits the aggregate amount of outstanding obligations the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company.

§ 149.2 Definitions.

As used in this part:

Fair value. The term “fair value” means the expected total aggregate value of each asset, or group of assets that are managed within a portfolio of a covered financial company on a consolidated basis if such asset, or group of assets, was sold or otherwise disposed of in an orderly transaction.

Most recent financial statement available. (1) The term “most recent financial statement available” means a covered financial company’s—

- (i) Most recent financial statement filed with the Securities and Exchange Commission or any other regulatory body;
- (ii) Most recent financial statement audited by an independent CPA firm; or
- (iii) Other available financial statements.

(2) The FDIC and the Treasury will jointly determine the most pertinent of the above financial statements, taking into consideration the timeliness and reliability of the statements being considered.

Obligation. The term “obligation” means, with respect to any covered financial company—

- (1) Any guarantee issued by the FDIC on behalf of the covered financial company;
- (2) Any amount borrowed pursuant to section 210(n)(5)(A) of the Act; and
- (3) Any other obligation with respect to the covered financial company for which the FDIC has a direct or contingent liability to pay any amount.

Total consolidated assets of each covered financial company that are available for repayment. The term “total consolidated assets of each covered financial company that are available for repayment” means the difference between:

(1) The total assets of the covered financial company on a consolidated basis that are available for liquidation during the operation of the receivership; and

(2) To the extent included in paragraph (1) of this definition, all assets that are separated from, or made unavailable to, the covered financial company by a statutory or regulatory barrier that prevents the covered financial company from possessing or selling assets and using the proceeds from the sale of such assets.

§ 149.3 Maximum obligation limitation.

The FDIC shall not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding for each covered financial company would exceed—

(a) An amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the FDIC as receiver (or a shorter time period if the FDIC has calculated the amount described under paragraph (b) of this section); and

(b) The amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in paragraph (a) of this section.

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AUTHORITY: 12 U.S.C. 5345; 31 U.S.C. 321.