FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991 [1]

[Public Law 102–242]

[As Amended Through P.L. 111–203, Enacted July 21, 2010]

[Currency: This publication is a compilation of the text of Public Law 102–242. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at https://www.govinfo.gov/app/collection/comps/]

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

* * * * * * *

TITLE I—SAFETY AND SOUNDNESS

Subtitle A—Deposit Insurance Funds

* * * * * * *

SEC. 102. LIMITATION ON OUTSTANDING BORROWING.

* * * * * * *

[(b) Repealed by section 106(c) of P.L. 104–316 (110 Stat. 3831).]

* * * * * * *

Subtitle B—Supervisory Reforms

SEC. 111. IMPROVED EXAMINATIONS.

(a)

* * * * * * *

(d) [12 U.S.C. 3305 nt.] EXAMINATION IMPROVEMENT PROGRAM.—

(1) IN GENERAL.—The appropriate Federal banking agencies, acting through the Federal Financial Institutions Examination Council, shall each establish a comparable examination

[1] Note: The Federal Depository Insurance Corporation Act of 1991 was largely amendatory of other Acts. Many of the free-standing provisions of such Act, while still in effect, did not have a permanent or long-term application and therefore are not contained in this compilation. Subtitles C and F of title II of such Act, the Bank Enterprise Act of 1991 and the Truth in Savings Act, respectively, each appear under their own heading.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

improvement program that meets the requirements of paragraph (2).

(2) REQUIREMENTS.—An examination improvement program meets the requirements of this paragraph if, under the program, the agency is required—

(A) to periodically review the organization and training of the staff of the agency who are responsible for conducting examinations of insured depository institutions and to make such improvements as the agency determines to be appropriate to ensure frequent, objective, and thorough examinations of such institutions; and

(B) to increase the number of examiners, supervisors, and other individuals employed by the agency in connection with conducting or supervising examinations of insured depository institutions to the extent necessary to ensure frequent, objective, and thorough examinations of such institutions.

* * * * * * *

SEC. 122. [12 U.S.C. 1817 nt.] SMALL BUSINESS AND SMALL FARM LOAN INFORMATION.

(a) IN GENERAL.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to annually submit information on small businesses and small farm lending in their reports of condition.

(b) CREDIT AVAILABILITY.—The regulations prescribed under subsection (a) shall require insured depository institutions to submit such information as the agency may need to assess the availability of credit to small businesses and small farms.

(c) CONTENTS.—The information required under subsection (a) may include information regarding the following:

(1) The total number and aggregate dollar amount of commercial loans and commercial mortgage loans to small businesses.

(2) Charge-offs, interest, and interest fee income on commercial loans and commercial mortgage loans to small businesses.

(3) Agricultural loans to small farms.

* * * * * * *

Subtitle E—Least-Cost Resolution

SEC. 141. [12 U.S.C. 1823 nt.] LEAST-COST RESOLUTION.

(a) LEAST-COST RESOLUTIONS REQUIRED.—

(1)

(2) GAO COMPLIANCE AUDIT.—The Comptroller General of the United States shall audit, under such conditions as the Comptroller General determines to be appropriate, the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to determine the extent to which such corporations

are complying with section 13(c)(4) of the Federal Deposit Insurance Act.

* * * * * * *

TITLE II—REGULATORY IMPROVEMENT

* * * * * * *

Subtitle C—Bank Enterprise Act

SEC. 231. [12 U.S.C. 1811 nt.] SHORT TITLE.

This subtitle may be cited as the "Bank Enterprise Act of 1991".

SEC. 232. [12 U.S.C. 1834] REDUCED ASSESSMENT RATE FOR DEPOSITS ATTRIBUTABLE TO LIFELINE ACCOUNTS.

(a) QUALIFICATION OF LIFELINE ACCOUNTS.—

(1) IN GENERAL.—The Comptroller of the Currency and the Federal Deposit Insurance Corporation shall establish minimum requirements for accounts providing basic transaction services for consumers at insured depository institutions in order for such accounts to qualify as lifeline accounts for purposes of this section and section 7(b)(2)(E) of the Federal Deposit Insurance Act.

(2) FACTORS TO BE CONSIDERED.—In determining the minimum requirements under paragraph (1) for lifeline accounts at insured depository institutions, the Board and the Corporation shall consider the following factors:

(A) Whether the account is available to provide basic transaction services for individuals who maintain a balance of less than $1,000 or such other amount which the Comptroller may determine to be appropriate.

(B) Whether any service charges or fees to which the account is subject, if any, for routine transactions do not exceed a minimal amount.

(C) Whether any minimum balance or minimum opening requirement to which the account is subject, if any, is not more than a minimal amount.

(D) Whether checks, negotiable orders of withdrawal, or similar instruments for making payments or other transfers to third parties may be drawn on the account.

(E) Whether the depositor is permitted to make more than a minimal number of withdrawals from the account each month by any means described in subparagraph (D) or any other means.

(F) Whether a monthly statement itemizing all transactions for the monthly reporting period is made available to the depositor with respect to such account or a passbook is provided in which all transactions with respect to such account are recorded.

(G) Whether depositors are permitted access to tellers at the institution for conducting transactions with respect to such account.

(H) Whether other account relationships with the institution are required in order to open any such account.

(I) Whether individuals are required to meet any prerequisite which discriminates against low-income individuals in order to open such account.

(J) Such other factors as the Board may determine to be appropriate.

(3) DEFINITIONS.—For purposes of this subsection—

(A) COMPTROLLER.—The term "Comptroller" means the Comptroller of the Currency.

(B) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

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

(D) LIFELINE ACCOUNT.—The term "lifeline account" means any transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) which meets the minimum requirements established by the Board under this subsection.

(b) [Subsection (b) amended other provisions of law.]

(c) AVAILABILITY OF FUNDS.—The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 233. [12 U.S.C. 1834a] ASSESSMENT CREDITS FOR QUALIFYING ACTIVITIES RELATING TO DISTRESSED COMMUNITIES.

(a) DETERMINATION OF CREDITS FOR INCREASES IN COMMUNITY ENTERPRISE ACTIVITIES.—

(1) IN GENERAL.—The Community Enterprise Assessment Credit Board established under subsection (d) shall issue guidelines for insured depository institutions eligible under this subsection for any community enterprise assessment credit with respect to any semiannual period. Such guidelines shall—

(A) designate the eligibility requirements for any institution meeting applicable capital standards to receive an assessment credit under section 7(b)(7) of the Federal Deposit Insurance Act; and

(B) determine the community enterprise assessment credit available to any eligible institution under paragraph (3).

(2) QUALIFYING ACTIVITIES.—An insured depository institution may apply for[3] for any community enterprise assessment credit for any semiannual period for—

(A) the amount, during such period, of new originations of qualified loans and other assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neigh-

[3] Probably should strike "for". See section 114(c)(1)(A) of P.L. 103–325.

borhoods, which the Board determines are qualified to be taken into account for purposes of this subsection;

(B) the amount, during such period, of deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and new originations of any loans and other financial assistance made within that community, except that in no case shall the credit for deposits at any institution or branch exceed the credit for loans and other financial assistance by the bank or branch in the distressed community; and

(C) any increase during the period in the amount of new equity investments in community development financial institutions.

(3) AMOUNT OF ASSESSMENT CREDIT.—The amount of any community enterprise assessment credit available under section 7(b)(7) of the Federal Deposit Insurance Act for any insured depository institution, or a qualified portion thereof, shall be the amount which is equal to 5 percent, in the case of an institution which does not meet the community development organization requirements under section 234, and 15 percent, in the case of an institution, or a qualified portion thereof, which meets such requirements (or any percentage designated under paragraph (5)) of—

(A) for the first full semiannual period in which community enterprise assessment credits are available, the sum of—

(i) the amounts of assets described in paragraph (2)(A); and

(ii) the amounts of deposits, loans, and other financial assistance described in paragraph (2)(B); and

(B) for any subsequent semiannual period, the sum of—

(i) any increase during such period in the amount of assets described in paragraph (2)(A) that has been deemed eligible for credit by the Board; and

(ii) any increase during such period in the amounts of deposits, loans, and other financial assistance described in paragraph (2)(B) that has been deemed eligible for credit by the Board.

(4) DETERMINATION OF QUALIFIED LOANS AND OTHER FINANCIAL ASSISTANCE.—Except as provided in paragraph (6), the types of loans and other assistance which the Board may determine to be qualified to be taken into account under paragraph (2)(A) for purposes of the community enterprise assessment credit, may include the following:

(A) Loans insured or guaranteed by the Secretary of Housing and Urban Development, the Secretary of the Department of Veterans Affairs, the Administrator of the Small Business Administration, and the Secretary of Agriculture.

(B) Loans or financing provided in connection with activities assisted by the Administrator of the Small Business Administration or any small business investment

company and investments in small business investment companies.

(C) Loans or financing provided in connection with any neighborhood housing service program assisted under the Neighborhood Reinvestment Corporation Act.

(D) Loans or financing provided in connection with any activities assisted under the community development block grant program under title I of the Housing and Community Development Act of 1974.

(E) Loans or financing provided in connection with activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act.

(F) Loans or financing provided in connection with a homeownership program assisted under title III of the United States Housing Act of 1937 or subtitle B or C of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(G) Financial assistance provided through community development corporations.

(H) Federal and State programs providing interest rate assistance for homeowners.

(I) Extensions of credit to nonprofit developers or purchasers of low-income housing and small business developments.

(J) In the case of members of any Federal home loan bank, participation in the community investment fund program established by the Federal home loan banks.

(K) Conventional mortgages targeted to low- or moderate-income persons.

(L) Loans made for the purpose of developing or supporting—

(i) commercial facilities that enhance revitalization, community stability, or job creation and retention efforts;

(ii) business creation and expansion efforts that—

(I) create or retain jobs for low-income people;

(II) enhance the availability of products and services to low-income people; or

(III) create or retain businesses owned by low-income people or residents of a targeted area;

(iii) community facilities that provide benefits to low-income people or enhance community stability;

(iv) home ownership opportunities that are affordable to low-income households;

(v) rental housing that is principally affordable to low-income households; and

(vi) other activities deemed appropriate by the Board.

(M) The provision of technical assistance to residents of qualified distressed communities in managing their personal finances through consumer education programs either sponsored or offered by insured depository institutions.

(N) The provision of technical assistance and consulting services to newly formed small businesses located in qualified distressed communities.

(O) The provision of technical assistance to, or servicing the loans of low- or moderate-income homeowners and homeowners located in qualified distressed communities.

(5) ADJUSTMENT OF PERCENTAGE.—The Board may increase or decrease the percentage referred to in paragraph (3)(A) for determining the amount of any community enterprise assessment credit pursuant to such paragraph, except that the percentage established for insured depository institutions which meet the community development organization requirements under section 234 shall not be less than 3 times the amount of the percentage applicable for insured depository institutions which do not meet such requirements.

(6) CERTAIN INVESTMENTS NOT ELIGIBLE TO BE TAKEN INTO ACCOUNT.—Loans, financial assistance, and equity investments made by any insured depository institution that are not the result of originations by the institution shall not be taken into account for purposes of determining the amount of any credit pursuant to this subsection.

(7) QUANTITATIVE ANALYSIS OF TECHNICAL ASSISTANCE.—The Board may establish guidelines for analyzing the technical assistance described in subparagraphs (M), (N), and (O) of paragraph (4) for the purpose of quantifying the results of such assistance in determining the amount of any community assessment credit under this subsection.

(b) QUALIFIED DISTRESSED COMMUNITY DEFINED.—

(1) IN GENERAL.—For purposes of this section, the term "qualified distressed community" means any neighborhood or community which—

(A) meets the minimum area requirements under paragraph (3) and the eligibility requirements of paragraph (4); and

(B) is designated as a distressed community by any insured depository institution in accordance with paragraph (2) and such designation is not disapproved under such paragraph.

(2) DESIGNATION REQUIREMENTS.—

(A) NOTICE OF DESIGNATION.—

(i) NOTICE TO AGENCY.—Upon designating an area as a qualified distressed community, an insured depository institution shall notify the appropriate Federal banking agency of the designation.

(ii) PUBLIC NOTICE.—Upon the effective date of any designation of an area as a qualified distressed community, an insured depository institution shall publish a notice of such designation in major newspapers and other community publications which serve such area.

(B) AGENCY DUTIES RELATING TO DESIGNATIONS.—

(i) PROVIDING INFORMATION.—At the request of any insured depository institution, the appropriate

Federal banking agency shall provide to the institution appropriate information to assist the institution to identify and designate a qualified distressed community.

(ii) PERIOD FOR DISAPPROVAL.—Any notice received by the appropriate Federal banking agency from any insured depository institution under subparagraph (A)(i) shall take effect at the end of the 90-day period beginning on the date such notice is received unless written notice of the approval or disapproval of the application by the agency is provided to the institution before the end of such period.

(3) MINIMUM AREA REQUIREMENTS.—For purposes of this subsection, an area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of 1 unit of general local government;

(B) the boundary of the area is contiguous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000, if any portion of such area is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000, in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(4) ELIGIBILITY REQUIREMENTS.—For purposes of this subsection, an area meets the requirements of this paragraph if the following criteria are met:

(A) At least 30 percent of the residents residing in the area have incomes which are less than the national poverty level.

(B) The unemployment rate for the area is 1½ times greater than the national average (as determined by the Bureau of Labor Statistics' most recent figures).

(C) Such additional eligibility requirements as the Board may, in its discretion, deem necessary to carry out the provisions of this subtitle.

(c) [Subsection (c) amended other provisions of law.]

(d) COMMUNITY ENTERPRISE ASSESSMENT CREDIT BOARD.—

(1) ESTABLISHMENT.—There is hereby established the "Community Enterprise Assessment Credit Board".

(2) NUMBER AND APPOINTMENT.—The Board shall be composed of 5 members as follows:

(A) The Secretary of the Treasury or a designee of the Secretary.

(B) The Secretary of Housing and Urban Development or a designee of the Secretary.

(C) The Chairperson of the Federal Deposit Insurance Corporation or a designee of the Chairperson.

(D) 2 individuals appointed by the President from among individuals who represent community organizations.

(3) TERMS.—

(A) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 5 years.

(B) INTERIM APPOINTMENT.—Any member appointed to fill a vacancy occurring before the expiration of the term to which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(C) CONTINUATION OF SERVICE.—Each appointed member may continue to serve after the expiration of the period to which such member was appointed until a successor has been appointed.

(4) CHAIRPERSON.—The Secretary of the Treasury shall serve as the Chairperson of the Board.

(5) NO PAY.—No members of the Commission may receive any pay for service on the Board.

(6) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(7) MEETINGS.—The Board shall meet at the call of the Chairperson or a majority of the Board's members.

(e) DUTIES OF THE BOARD.—

(1) PROCEDURE FOR DETERMINING COMMUNITY ENTERPRISE ASSESSMENT CREDITS.—The Board shall establish procedures for accepting and considering applications by insured depository institutions under subsection (a)(1) for community enterprise assessment credits and making determinations with respect to such applications.

(2) NOTICE TO FDIC.—The Board shall notify the applicant and the Federal Deposit Insurance Corporation of any determination of the Board with respect to any application referred to in paragraph (1) in sufficient time for the Corporation to include the amount of such credit in the computation of the semiannual assessment to which such credit is applicable.

(f) AVAILABILITY OF FUNDS.—The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(g) PROHIBITION ON DOUBLE FUNDING FOR SAME ACTIVITIES.—No community development financial institution may receive a community enterprise assessment credit if such institution, either directly or through a community partnership—

(1) has received assistance within the preceding 12-month period, or has an application for assistance pending, under section 105 of the Community Development Banking and Financial Institutions Act of 1994; or

(2) has ever received assistance, under section 108 of the Community Development Banking and Financial Institutions Act of 1994, for the same activity during the same semiannual

period for which the institution seeks a community enterprise assessment credit under this section.

(h) PRIORITY OF AWARDS.—

(1) QUALIFYING LOANS AND SERVICES.—

(A) IN GENERAL.—If the amount of funds appropriated for purposes of carrying out this section for any fiscal year are insufficient to award the amount of assessment credits for which insured depository institutions have applied and are eligible under this section, the Board shall, in awarding community enterprise assessment credits for qualifying activities under subparagraphs (A) and (B) of subsection (a)(2) for any semiannual period for which such appropriation is available, determine which institutions shall receive an award.

(B) PRIORITY FOR SUPPORT OF EFFORTS OF CDFI.—The Board shall give priority to institutions that have supported the efforts of community development financial institutions in the qualified distressed community.

(C) OTHER FACTORS.—The Board may also consider the following factors:

(i) DEGREE OF DIFFICULTY.—The degree of difficulty in carrying out the activities that form the basis for the institution's application.

(ii) COMMUNITY IMPACT.—The extent to which the activities that form the basis for the institution's application have benefited the qualified distressed community.

(iii) INNOVATION.—The degree to which the activities that form the basis for the institution's application have incorporated innovative methods for meeting community needs.

(iv) LEVERAGE.—The leverage ratio between the dollar amount of the activities that form the basis for the institution's application and the amount of the assessment credit calculated in accordance with this section for such activities.

(v) SIZE.—The amount of total assets of the institution.

(vi) NEW ENTRY.—Whether the institution had provided financial services in the designated distressed community before such semiannual period.

(vii) NEED FOR SUBSIDY.—The degree to which the qualified activity which forms the basis for the application needs enhancement through an assessment credit.

(viii) EXTENT OF DISTRESS IN COMMUNITY.—The degree of poverty and unemployment in the designated distressed community, the proportion of the total population of the community which are low-income families and unrelated individuals, and the extent of other adverse economic conditions in such community.

(2) QUALIFYING INVESTMENTS.—If the amount of funds appropriated for purposes of carrying out this section for any fiscal year are insufficient to award the amount of assessment

G:\COMP\102\102-242.XML

credits for which insured depository institutions have applied and are eligible under this section, the Board shall, in awarding community enterprise assessment credits for qualifying activities under subsection (a)(2)(C) for any semiannual period for which such appropriation is available, determine which institutions shall receive an award based on the leverage ratio between the dollar amount of the activities that form the basis for the institution's application and the amount of the assessment credit calculated in accordance with this section for such activities.

(i) DETERMINATION OF AMOUNT OF ASSESSMENT CREDIT.—Notwithstanding any other provision of this section, the determination of the amount of any community enterprise assessment credit under subsection (a)(3) for any insured depository institution for any semiannual period shall be made solely at the discretion of the Board. No insured depository institution shall be awarded community enterprise assessment credits for any semiannual period in excess of an amount determined by the Board.

(j) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act.

(2) BOARD.—The term "Board" means the Community Enterprise Assessment Credit Board established under the amendment made by subsection (d).

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

(4) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term "community development financial institution" has the same meaning as in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994.

(5) AFFILIATE.—The term "affiliate" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

SEC. 234. [12 U.S.C. 1834b] COMMUNITY DEVELOPMENT ORGANIZATIONS.

(a) COMMUNITY DEVELOPMENT ORGANIZATIONS DESCRIBED.—For purposes of this subtitle, any insured depository institution, or a qualified portion thereof, shall be treated as meeting the community development organization requirements of this section if—

(1) the institution—

(A) is a community development bank, or controls any community development bank, which meets the requirements of subsection (b);

(B) controls any community development corporation, or maintains any community development unit within the institution, which meets the requirements of subsection (c);

(C) invests in accounts in any community development credit union designated as a low-income credit union, subject to restrictions established for such credit unions by the National Credit Union Administration Board; or

(D) invests in a community development organization jointly controlled by two or more institutions;

(2) except in the case of an institution which is a community development bank, the amount of the capital invested, in the form of debt or equity, by the institution in the community development organization referred to in paragraph (1) (or, in the case of any community development unit, the amount which the institution irrevocably makes available to such unit for the purposes described in paragraph (3)) is not less than the greater of—

(A) ½ of 1 percent of the capital, as defined by generally accepted accounting principles, of the institution; or

(B) the sum of the amounts invested in such community development organization; and

(3) the community development organization provides loans for residential mortgages, home improvement, and community development and other financial services, other than financing for the purchase of automobiles or extension of credit under any open-end credit plan (as defined in section 103(i) of the Truth in Lending Act), to low- and moderate-income persons, nonprofit organizations, and small businesses located in qualified distressed communities in a manner consistent with the intent of this subtitle.

(b) COMMUNITY DEVELOPMENT BANK REQUIREMENTS.—A community development bank meets the requirements of this subsection if—

(1) the community development bank has a 15-member advisory board designated as the "Community Investment Board" and consisting entirely of community leaders who—

(A) shall be appointed initially by the board of directors of the community development bank and thereafter by the Community Investment Board from nominations received from the community; and

(B) are appointed for a single term of 2 years, except that, of the initial members appointed to the Community Investment Board, ⅓ shall be appointed for a term of 8 months, ⅓ shall be appointed for a term of 16 months, and ⅓ shall be appointed for a term of 24 months, as designated by the board of directors of the community development bank at the time of the appointment;

(2) ⅓ of the members of the community development bank's board of directors are appointed from among individuals nominated by the Community Investment Board; and

(3) the bylaws of the community development bank require that the board of directors of the bank meet with the Community Investment Board at least once every 3 months.

(c) COMMUNITY DEVELOPMENT CORPORATION REQUIREMENTS.—Any community development corporation, or community development unit within any insured depository institution meets the requirements of this subsection if the corporation or unit provides the same or greater, as determined by the appropriate Federal banking agency, community participation in the activities of such corporation or unit as would be provided by a Community Investment Board under subsection (b) if such corporation or unit were a community development bank.

(d) ADEQUATE DISPERSAL REQUIREMENT.—The appropriate Federal banking agency may approve the establishment of a community development organization under this subtitle only upon finding that the distressed community is not adequately served by an existing community development organization.

(e) DEFINITIONS.—For purposes of this section—

(1) COMMUNITY DEVELOPMENT BANK.—The term "community development bank" means any depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act).

(2) COMMUNITY DEVELOPMENT ORGANIZATION.—The term "community development organization" means any community development bank, community development corporation, community development unit within any insured depository institution, or community development credit union.

(3) LOW- AND MODERATE-INCOME PERSONS.—The term "low- and moderate-income persons" has the meaning given such term in section 102(a)(20) of the Housing and Community Development Act of 1974.

(4) NONPROFIT ORGANIZATION; SMALL BUSINESS.—The terms "nonprofit organization" and "small business" have the meanings given to such terms by regulations which the appropriate Federal banking agency shall prescribe for purposes of this section.

(5) QUALIFIED DISTRESSED COMMUNITY.—The term "qualified distressed community" has the meaning given to such term in section 233(b).

Subtitle D—FDIC Property Disposition

SEC. 241. FDIC AFFORDABLE HOUSING PROGRAM.

(a)

(b) [12 U.S.C. 1831q nt.] COORDINATION.—The Federal Deposit Insurance Corporation and the Resolution Trust Corporation [4] shall consult and coordinate with each other in carrying out their respective responsibilities under the affordable housing programs under section 40 of the Federal Deposit Insurance Act and section 21A(c) of the Federal Home Loan Bank Act. Such corporations shall develop any procedures, and may enter into any agreements, necessary to provide for the coordinated, efficient, and effective operation of such programs.

* * * * * * *

Subtitle F—Truth in Savings

SEC. 261. [12 U.S.C. 4301 nt.] SHORT TITLE.

This subtitle may be cited as the "Truth in Savings Act".

SEC. 262. [12 U.S.C. 4301] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that economic stability would be enhanced, competition between depository institu-

[4] The Resolution Trust Corporation has been abolished (see section 21A(m) of the Federal Home Loan Bank Act).

tions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts, and to verify accounts, would be strengthened if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts.

(b) PURPOSE.—It is the purpose of this subtitle to require the clear and uniform disclosure of—

(1) the rates of interest which are payable on deposit accounts by depository institutions; and

(2) the fees that are assessable against deposit accounts,

so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts.

SEC. 263. [12 U.S.C. 4302] DISCLOSURE OF INTEREST RATES AND TERMS OF ACCOUNTS.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), each advertisement, announcement, or solicitation initiated by any depository institution or deposit broker relating to any demand or interest-bearing account offered by an insured depository institution which includes any reference to a specific rate of interest payable on amounts deposited in such account, or to a specific yield or rate of earnings on amounts so deposited, shall state the following information, to the extent applicable, in a clear and conspicuous manner:

(1) The annual percentage yield.

(2) The period during which such annual percentage yield is in effect.

(3) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

(4) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield advertised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

(5) A statement that regular fees or other conditions could reduce the yield.

(6) A statement that an interest penalty is required for early withdrawal.

(b) BROADCAST AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING EXCEPTION.—The Bureau may, by regulation, exempt advertisements, announcements, or solicitations made by any broadcast or electronic medium or outdoor advertising display not on the premises of the depository institution from any disclosure requirements described in paragraph (4) or (5) of subsection (a) if the Bureau finds that any such disclosure would be unnecessarily burdensome.

(c) DISCLOSURE REQUIRED FOR ON-PREMISES DISPLAYS.—

The disclosure requirements contained in this section shall not apply to any sign (including a rate board) disclosing a rate or rates of interest which is displayed on the premises of the depository institution if such sign contains—

(1) the accompanying annual percentage yield; and

(2) a statement that the consumer should request further information from an employee of the depository institution concerning the fees and terms applicable to the advertised account.

(d) MISLEADING DESCRIPTIONS OF FREE OR NO-COST ACCOUNTS PROHIBITED.—No advertisement, announcement, or solicitation made by any depository institution or deposit broker may refer to or describe an account as a free or no-cost account (or words of similar meaning) if—

(1) in order to avoid fees or service charges for any period—

(A) a minimum balance must be maintained in the account during such period; or

(B) the number of transactions during such period may not exceed a maximum number; or

(2) any regular service or transaction fee is imposed.

(e) MISLEADING OR INACCURATE ADVERTISEMENTS, ETC., PROHIBITED.—No depository institution or deposit broker shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

SEC. 264. [12 U.S.C. 4303] ACCOUNT SCHEDULE.

(a) IN GENERAL.—Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Bureau shall prescribe. The Bureau shall specify, in regulations, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

(b) INFORMATION ON FEES AND CHARGES.—The schedule required under subsection (a) with respect to any account shall contain the following information:

(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charge, or penalty (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) INFORMATION ON INTEREST RATES.—The schedule required under subsection (a) with respect to any account shall include the following information:

(1) Any annual percentage yield.

(2) The period during which any such annual percentage yield will be in effect.

(3) Any annual rate of simple interest.

(4) The frequency with which interest will be compounded and credited.

(5) A clear description of the method used to determine the balance on which interest is paid.

(6) The information described in paragraphs (1) through (4) with respect to any period after the end of the period referred to in paragraph (2) (or the method for computing any information described in any such paragraph), if applicable.

(7) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how any such minimum balance is calculated.

(8) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

(9) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from the account will not be paid by the depository institution or credited to the account by reason of such withdrawal.

(10) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

(d) OTHER INFORMATION.—The schedule required under subsection (a) shall include such other disclosures as the Bureau may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

(e) STYLE AND FORMAT.—Schedules required under subsection (a) shall be written in clear and plain language and be presented in a format designed to allow consumers to readily understand the terms of the accounts offered.

SEC. 265. [12 U.S.C. 4304] DISCLOSURE REQUIREMENTS FOR CERTAIN ACCOUNTS.

The Bureau shall require, in regulations which the Bureau shall prescribe, such modification in the disclosure requirements under this subtitle relating to annual percentage yield as may be necessary to carry out the purposes of this subtitle in the case of—

(1) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

(2) variable rate accounts;

(3) accounts which, pursuant to law, do not guarantee payment of a stated rate;

(4) multiple rate accounts; and

(5) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a stated term.

SEC. 266. [12 U.S.C. 4305] DISTRIBUTION OF SCHEDULES.

(a) IN GENERAL.—A schedule required under section 264 for an appropriate account shall be—

(1) made available to any person upon request;

(2) provided to any potential customer before an account is opened or a service is rendered; and

(3) provided to the depositor, in the case of any time deposit which has a maturity of more than 30 days is renewable at maturity without notice from the depositor, at least 30 days before the date of maturity.

(b) DISTRIBUTION IN CASE OF CERTAIN INITIAL DEPOSITS.—If—

(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

(2) the schedule required under section 264(a) has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account no later than 10 days after the date of the initial deposit.

(c) DISTRIBUTION OF NOTICE OF CERTAIN CHANGES.—If—

(1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 264(a) with respect to any account; and

(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect.

(d) DISTRIBUTION IN CASE OF ACCOUNTS ESTABLISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 individual representative of the person on whose behalf such account was established.

(e) NOTICE TO ACCOUNT HOLDERS AS OF THE EFFECTIVE DATE OF REGULATIONS.—For any account for which the depository institution delivers an account statement on a quarterly or more frequent basis, the depository institution shall include on or with the first regularly scheduled mailing sent after the end of the 6-month period beginning on the date of publication of regulations issued by the Bureau in final form, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.

SEC. 267. [12 U.S.C. 4306] PAYMENT OF INTEREST.

(a) CALCULATED ON FULL AMOUNT OF PRINCIPAL.—Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this subtitle.

(b) NO PARTICULAR METHOD OF COMPOUNDING INTEREST REQUIRED.—Subsection (a) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting of interest.

(c) DATE BY WHICH INTEREST MUST ACCRUE.—Interest on accounts that are subject to this subtitle shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, subject to subsections (b) and (c) of such section.

SEC. 268. [12 U.S.C. 4307] PERIODIC STATEMENTS.

Each depository institution shall include on or with each periodic statement provided to each account holder at such institution a clear and conspicuous disclosure of the following information with respect to such account:

(1) The annual percentage yield earned.

(2) The amount of interest earned.

(3) The amount of any fees or charges imposed.

(4) The number of days in the reporting period.

SEC. 269. [12 U.S.C. 4308] REGULATIONS.

(a) IN GENERAL.—

(1) REGULATIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this subtitle, the Bureau, after consultation with each agency referred to in section 270(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle.

(2) EFFECTIVE DATE OF REGULATIONS.—The regulations prescribed under paragraph (1) shall take effect not later than 9 months after publication in final form.

(3) CONTENTS OF REGULATIONS.—The regulations prescribed under paragraph (1) may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Bureau, are necessary or proper to carry out the purposes of this subtitle, to prevent circumvention or evasion of the requirements of this subtitle, or to facilitate compliance with the requirements of this subtitle.

(4) DATE OF APPLICABILITY.—The provisions of this subtitle shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Bureau under this subsection (or by the National Credit Union Administration Bureau[6] under section 12(b),[7] in the case of any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act).

(b) MODEL FORMS AND CLAUSES.—

(1) IN GENERAL.—The Bureau shall publish model forms and clauses for common disclosures to facilitate compliance with this subtitle. In devising such forms, the Bureau shall

[6] The reference in paragraph (4) to "National Credit Union Administration Bureau" probably should be to "National Credit Union Administration Board". See amendment made by section 1100B of Public Law 111–203.

[7] So in original. Should probably be "section 272(b)".

consider the use by depository institutions of data processing or similar automated machines.

(2) USE OF FORMS AND CLAUSES DEEMED IN COMPLIANCE.—Nothing in this subtitle may be construed to require a depository institution to use any such model form or clause prescribed by the Bureau under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this subtitle if the depository institution—

(A) uses any appropriate model form or clause as published by the Bureau; or

(B) uses any such model form or clause and changes it by—

(i) deleting any information which is not required by this subtitle; or

(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

(3) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT.—Model disclosure forms and clauses shall be adopted by the Bureau after duly given notice in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 270. [12 U.S.C. 4309] ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this subtitle shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

(2) the Federal Credit Union Act, by the National Credit Union Administration Bureau[8] in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act; and

(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle.

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS SUBTITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency re-

[8] The reference in paragraph (2) to the "National Credit Union Administration Bureau" probably should be to the "National Credit Union Administration Board". See amendment made by section 1100B(1) of Public Law 111–203.

ferred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this subtitle shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this subtitle, any other authority conferred on such agency by law.

(c) REGULATIONS BY AGENCIES OTHER THAN THE BUREAU.—The authority of the Bureau to issue regulations under this subtitle does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this subtitle.

SEC. 272. [12 U.S.C. 4311] CREDIT UNIONS.

(a) IN GENERAL.—No regulation prescribed by the Bureau under this subtitle shall apply directly with respect to any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) REGULATIONS PRESCRIBED BY THE NCUA.—Within 90 days of the effective date of any regulation prescribed by the Bureau under this subtitle, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Bureau taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

SEC. 273. [12 U.S.C. 4312] EFFECT ON STATE LAW.

The provisions of this subtitle do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency. The Bureau may determine whether such inconsistencies exist.

SEC. 274. [12 U.S.C. 4313] DEFINITIONS.

For the purposes of this subtitle—

(1) ACCOUNT.—The term "account" means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

(2) ANNUAL PERCENTAGE YIELD.—The term "annual percentage yield" means the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Bureau in regulations.

(3) ANNUAL RATE OF SIMPLE INTEREST.—The term "annual rate of simple interest"—

G:\COMP\102\102-242.XML

(A) means the annualized rate of interest paid with respect to each compounding period, expressed as a percentage; and

(B) may be referred to as the "annual percentage rate".

(4) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection.

(5) DEPOSIT BROKER.—The term "deposit broker"—

(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

(6) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act, but does not include any nonautomated credit union that was not required to comply with the requirements of this title as of the date of enactment of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, pursuant to the determination of the National Credit Union Administration Bureau[9].

(7) INTEREST.—The term "interest" includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

(8) MULTIPLE RATE ACCOUNT.—The term "multiple rate account" means any account that has 2 or more annual rates of simple interest which take effect at the same time or in succeeding periods and which are known at the time of disclosure.

TITLE III—FEDERAL DEPOSIT INSURANCE REFORM

Subtitle A—Activities

* * * * * * *

SEC. 305. [12 U.S.C. 1828 nt.] IMPROVING CAPITAL STANDARDS.

(a)

(b) REVIEW OF RISK-BASED CAPITAL STANDARDS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall revise its risk-based capital standards for insured depository institutions to ensure that those standards—

(A) take adequate account of—

(i) interest-rate risk;

(ii) concentration of credit risk; and

(iii) the risks of nontraditional activities;

(B) reflect the actual performance and expected risk of loss of multifamily mortgages; and

(C) take into account the size and activities of the institutions and do not cause undue reporting burdens.

[9] So in original. Probably should be "Board."

(2) INTERNATIONAL DISCUSSIONS.—The Federal banking agencies shall discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements.

(3) DEADLINE FOR PRESCRIBING REVISED STANDARDS.—Each appropriate Federal banking agency shall—

(A) publish final regulations in the Federal Register to implement paragraph (1) not later than 18 months after the date of enactment of this Act; and

(B) establish reasonable transition rules to facilitate compliance with those regulations.

(4) DEFINITIONS.—For purposes of this subsection, the terms "appropriate Federal banking agency", "Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

* * * * * * *

SEC. 306. SAFEGUARDS AGAINST INSIDER ABUSE.

(a)

* * * * * * *

(o) [12 U.S.C. 375b nt.] REPORTING OF CREDIT BY EXECUTIVE OFFICERS AND DIRECTORS.—An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company.

* * * * * * *

Subtitle B—Coverage

SEC. 311. DEPOSIT AND PASS-THROUGH INSURANCE.

(a)

* * * * * * *

(d) [12 U.S.C. 1821 nt.] INFORMATIONAL STUDY.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation, in conjunction with such consultants and technical experts as the Corporation determines to be appropriate, shall conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual and the exposure, under any Act of Congress or any regulation of any appropriate Federal banking agency, of the Federal Government with respect to all insured depository institutions.

(2) ANALYSIS OF COSTS AND BENEFITS.—The study under paragraph (1) shall include detailed, technical analysis of the costs and benefits associated with the least expensive way to implement the system.

(3) SPECIFIC FACTORS TO BE STUDIED.—As part of the study under paragraph (1), the Corporation shall investigate, review, and evaluate—

(A) the data systems that would be required to track deposits in all insured depository institutions;

(B) the reporting burdens of such tracking on individual depository institutions;

(C) the systems which exist or which would be required to be developed to aggregate such data on an accurate basis;

(D) the implications such tracking would have for individual privacy; and

(E) the manner in which systems would be administered and enforced.

(4) FEDERAL RESERVE BOARD SURVEY.—As part of the informational study required under paragraph (1), the Board of Governors of the Federal Reserve System shall conduct, in conjunction with other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals including the dollar amount of deposits held, the type of deposit accounts held, and the type of financial institutions in which the deposit accounts are held.

(5) ANALYSIS BY FDIC.—The results of the survey under paragraph (4) shall be provided to the Federal Deposit Insurance Corporation before the end of the 1-year period beginning on the date of the enactment of this Act for analysis and inclusion in the informational study.

(6) REPORT TO CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report containing a detailed statement of findings made and conclusions drawn from the study conducted under this section, including such recommendations for administrative and legislative action as the Corporation determines to be appropriate.

* * * * * * *

TITLE IV—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING

SEC. 401. [12 U.S.C. 4401] FINDINGS AND PURPOSE.

The Congress finds that—

(1) many financial institutions engage daily in thousands of transactions with other financial institutions directly and through clearing organizations;

(2) the efficient processing of such transactions is essential to a smoothly functioning economy;

(3) such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;

(4) such netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) the effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

SEC. 402. [12 U.S.C. 4402] DEFINITIONS.

For purposes of this chapter—

(1) BROKER OR DEALER.—The term "broker or dealer" means—

(A) any company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States; and

(B) to the extent consistent with this title, as determined by the Board of Governors of the Federal Reserve System, any company that is an affiliate of a company described in subparagraph (A) and that is engaged in the business of entering into netting contracts.

(2) CLEARING ORGANIZATION.—The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) in which all members other than the clearing organization itself are financial institutions or other clearing organizations; or

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934, or is exempt from such registration by order of the Securities and Exchange Commission; or

(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act, that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act).

(3) COVERED CLEARING OBLIGATION.—The term "covered clearing obligation" means an obligation of a member of a clearing organization to make payment to another member of a clearing organization, subject to a netting contract.

(4) COVERED CONTRACTUAL PAYMENT ENTITLEMENT.—The term "covered contractual payment entitlement" means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of a clearing organization of a covered clearing obligation.

G:\COMP\102\102-242.XML

(5) COVERED CONTRACTUAL PAYMENT OBLIGATION.—The term "covered contractual payment obligation" means—

(A) an obligation of a financial institution to make payment, subject to a netting contract to another financial institution; and

(B) a covered clearing obligation.

(6) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (other than clause (vii));

(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;

(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;

(D) a corporation chartered under section 25(a) of the Federal Reserve Act; or

(E) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

(7) FAILED FINANCIAL INSTITUTION.—The term "failed financial institution" means a financial institution that—

(A) fails to satisfy a covered contractual payment obligation when due;

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(8) FAILED MEMBER.—The term "failed member" means any member that—

(A) fails to satisfy a covered clearing obligation when due,

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings, or

(C) has generally ceased to meet its obligations when due.

(9) FINANCIAL INSTITUTION.—The term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) FUTURES COMMISSION MERCHANT.—The term "futures commission merchant" means a company that is registered or

licensed under Federal law to engage in the business of selling futures and options in commodities.

(11) MEMBER.—The term "member" means a member of or participant in a clearing organization, and includes the clearing organization and any other clearing organization with which such clearing organization has a netting contract.

(12) NET ENTITLEMENT.—The term "net entitlement" means the amount by which the covered contractual payment entitlements of a financial institution or member exceed the covered contractual payment obligations of the institution or member after netting under a netting contract.

(13) NET OBLIGATION.—The term "net obligation" means the amount by which the covered contractual payment obligations of a financial institution or member exceed the covered contractual payment entitlements of the institution or member after netting under a netting contract.

(14) NETTING CONTRACT.—

(A) IN GENERAL.—The term "netting contract"—

(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and

(ii) includes the rules of a clearing organization.

(B) INVALID CONTRACTS NOT INCLUDED.—The term "netting contract" does not include any contract or agreement that is invalid under or precluded by Federal law.

(15) PAYMENT.—The term "payment" means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.

SEC. 403. [12 U.S.C. 4403] BILATERAL NETTING.

(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 210(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)), section 207(c) of the Federal Credit Union Act, or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be terminated, liquidated, accelerated, and netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).

(b) LIMITATION ON OBLIGATION TO MAKE PAYMENT.—The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

G:\COMP\102\102-242.XML

(c) LIMITATION ON RIGHT TO RECEIVE PAYMENT.—The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

(d) PAYMENT OF NET ENTITLEMENT OF FAILED FINANCIAL INSTITUTION.—The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) EFFECTIVENESS NOTWITHSTANDING STATUS AS FINANCIAL INSTITUTION.—This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).

SEC. 404. [12 U.S.C. 4404] CLEARING ORGANIZATION NETTING.

(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be terminated, liquidated, accelerated, and netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).

(b) LIMITATION OF OBLIGATION TO MAKE PAYMENT.—The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) LIMITATION ON RIGHT TO RECEIVE PAYMENT.—The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) ENTITLEMENT OF FAILED MEMBERS.—The net entitlement, if any, of any failed member of a clearing organization shall be paid

to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) OBLIGATIONS OF FAILED MEMBERS.—The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) LIMITATION ON CLAIMS FOR ENTITLEMENT.—A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) EFFECTIVENESS NOTWITHSTANDING STATUS AS MEMBER.—This section shall be given effect notwithstanding that a member is a failed member.

(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).

SEC. 405. [12 U.S.C. 4405] PREEMPTION.

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 403 and 404.

SEC. 406. [12 U.S.C. 4406] RELATIONSHIP TO OTHER PAYMENTS SYSTEMS.

This subtitle shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this subtitle.

SEC. 407. [12 U.S.C. 4406a] TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

(1) any reference to the "Corporation as receiver" or "the receiver or the Corporation" shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation char-

G:\COMP\102\102-242.XML

tered under section 25A of the Federal Reserve Act or an uninsured State member bank;

(2) any reference to the "Corporation" (other than in section 11(e)(8)(D) of such Act), the "Corporation, whether acting as such or as conservator or receiver", a "receiver", or a "conservator" shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

(3) any reference to an "insured depository institution" or "depository institution" shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

(c) REGULATORY AUTHORITY.—

(1) IN GENERAL.—The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

(d) DEFINITIONS.—For purposes of this section, the terms "Federal branch", "Federal agency", and "foreign bank" have the same meanings as in section 1(b) of the International Banking Act of 1978.

SEC. 407A. [12 U.S.C. 4407] NATIONAL EMERGENCIES.

The provisions of this subtitle may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

CHAPTER 2—MULTILATERAL CLEARING ORGANIZATIONS

* * * * * * *

[Sections 408 and 409 were repealed by section 740 of Public Law 111–203.]

Subtitle I—Bank and Thrift Employee Provisions

SEC. 451. [12 U.S.C. 1821 nt.] CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS.

(a) CONTINUATION COVERAGE.—The Federal Deposit Insurance Corporation—

(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

(2) shall require that any successor described in subsection (b)(1)(B)(iii) provide a group health plan with respect to former employees of such institution in the same manner as the failed depository institution would have been required to provide but for its failure.

(b) DEFINITIONS.—For purposes of this section—

(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

(A) such entity holds substantially all of the assets or liabilities of such institution, and

(B) such entity is—

(i) the Federal Deposit Insurance Corporation,

(ii) any bridge bank, or

(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

(2) FAILED DEPOSITORY INSTITUTION.—The term "failed depository institution" means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) for which a receiver has been appointed.

(3) BRIDGE BANK.—The term "bridge bank" has the meaning given such term by section 3(i)(2) of the Federal Deposit Insurance Act.

(c) NO PREMIUM COSTS IMPOSED ON FDIC.—Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Cor-

poration to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

(d) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 occurred before, on, or after such date.

* * * * * * *

SEC. 475. [12 U.S.C. 1828 nt.] PURCHASED MORTGAGE SERVICING RIGHTS.

(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners' Loan Act, each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution's tangible capital, risk-based capital, or leverage limit, if—

(1) such servicing rights are valued at not more than 90 percent (or such other percentage exceeding 90 percent but not exceeding 100 percent, as may be determined under subsection (b)) of their fair market value; and

(2) the fair market value of such servicing rights is determined not less often than quarterly.

(b) AUTHORITY TO DETERMINE PERCENTAGE BY WHICH TO DISCOUNT VALUE OF SERVICING RIGHTS.—The appropriate Federal banking agencies may allow readily marketable purchased mortgage servicing rights to be valued at more than 90 percent of their fair market value but at not more than 100 percent of such value, if such agencies jointly make a finding that such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institutions.

(c) DEFINITION.—For purposes of this section, the terms "appropriate Federal banking agency", "deposit insurance fund", and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(d) EFFECTIVE DATE.—This section shall apply after the end of the 60-day period beginning on the date of the enactment of this Act.

* * * * * * *