

LEAST COST EXCEPTION ACT

FEBRUARY 2, 2026.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HILL of Arkansas, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 6547]

The Committee on Financial Services, to whom was referred the bill (H.R. 6547) to amend the Federal Deposit Insurance Act to provide an exception to the least-cost resolution requirement, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Least Cost Exception Act”.

SEC. 2. LEAST COST RESOLUTION EXCEPTION TO AVOID FURTHER CONCENTRATION AMONG GLOBAL SYSTEMICALLY IMPORTANT BANKING ORGANIZATIONS.

(a) IN GENERAL.—Section 13(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)) is amended—

(1) in subparagraph (A)(ii), by inserting “except as provided in subparagraph (I),” before “the total amount”;

(2) in subparagraph (E)(i), by inserting “and except as provided in subparagraph (I),” after “appropriate,”; and

(3) by adding at the end the following:

“(I) LEAST COST RESOLUTION EXCEPTION.—

“(i) IN GENERAL.—With respect to an exercise of authority by the Corporation described in subparagraph (A), the Corporation may, at the discretion of the Corporation, select an alternative method of exercising such authority that is not the least costly to the Deposit Insurance Fund, if—

“(I) the Corporation determines that the selected alternative complies with the requirements of clause (iii); and

“(II) the Corporation and the Board of Governors of the Federal Reserve System, after consultation with the Secretary of the Treasury, determine that the potential additional risks to the Deposit Insurance Fund of the selected alternative are outweighed by the reasonably expected benefits of limiting further concentration of the United States banking system in global systemically important banking organizations.

“(ii) MAXIMUM COST TO THE DEPOSIT INSURANCE FUND.—Not later than 1 year after the date of enactment of this subparagraph, the Corporation, by rule, shall establish criteria for determining on a case-by-case basis the maximum allowable cost against the net worth of the Deposit Insurance Fund that may be utilized to account for any determination under clause (i).

“(iii) REQUIREMENTS DESCRIBED.—The requirements for the selected alternative described in clause (i) are as follows:

“(I) The selected alternative is least costly to the Deposit Insurance Fund of all alternatives that do not involve a transaction with a global systemically important banking organization and that do not exceed the cost of liquidating the insured depository institution.

“(II) The difference between the cost of the selected alternative and the cost of a covered alternative is less than the maximum cost to the Deposit Insurance Fund specified pursuant to the rule adopted under clause (ii).

“(III) In the case of a selected alternative that involves another person purchasing assets of the insured depository institution or assuming deposit liabilities of the insured depository institution, such person agrees to pay an assessment to the Corporation comprised of payments—

“(aa) made over a period to be determined by the Corporation, but which may not be less than 5 years; and

“(bb) in an amount that takes into account, on a case-by-case basis, criteria the Corporation, by rule, shall establish, including a realistic discount rate, the aggregate amount equal to the difference calculated in subclause (II), and any bid inconsistent with the purposes of this Act, with such rule to be established by the Corporation not later than 1 year after the date of enactment of this subparagraph.

“(iv) REPORT TO CONGRESS.—Not later than 30 days after selecting an alternative described in clause (i), the Corporation shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing an analysis of the economic difference between the cost to the Deposit Insurance Fund of the selected alternative and the cost to the Deposit Insurance Fund of the least costly alternative that would have been selected absent the application of this subparagraph.

“(v) COST DETERMINATIONS.—All cost determinations required under this subparagraph shall be made in accordance with subparagraphs (B) and (C).

“(vi) DEFINITIONS.—In this subparagraph:

“(I) COVERED ALTERNATIVE.—The term ‘covered alternative’ means a method of exercising authority described in subparagraph (A) that is the least costly to the Deposit Insurance Fund of all such methods that involve a sale of all or substantially all assets of the insured depository institution to, and assumption of all or substantially all deposit liabilities of the insured depository institution by, a global systemically important banking organization.

“(II) GLOBAL SYSTEMICALLY IMPORTANT BANKING ORGANIZATION.—The term ‘global systemically important banking organization’ means a global systemically important BHC (as such term is defined in section 217.402 of title 12, Code of Federal Regulations, or any successor thereto) and any affiliate thereof.”

(b) RULE OF CONSTRUCTION.—Section 13(c)(4)(H) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(H)) does not apply to the amendments made by subsection (a).

PURPOSE AND SUMMARY

H.R. 6547, the *Least Cost Exception Act*, was introduced on December 10, 2025, by Republican Representative Mike Flood (NE-01). H.R. 6547 amends the *Federal Deposit Insurance Act* to allow the Federal Deposit Insurance Corporation (FDIC) to waive the least cost resolution if the FDIC determines certain conditions are met.

BACKGROUND AND NEED FOR LEGISLATION

The FDIC’s least cost resolution (LCR) mandate was established by the *Federal Deposit Insurance Corporation Improvement Act of 1991*, which requires the FDIC to resolve failing banks by choosing the method that costs the Deposit Insurance Fund (DIF) the least.¹ This replaced the prior, more flexible approach where the FDIC could protect uninsured depositors if it was less costly than a full payout and liquidation. Under the law, the FDIC must compare the costs of different resolution methods, such as purchase and assumption transactions with an acquirer or deposit payoffs, to determine the least costly option. Prior to the 1991 law, the FDIC had a policy to protect all depositors, even uninsured ones, by finding an acquiring institution to assume all deposits when feasible. The primary goal was to avoid bank runs, but this meant the FDIC might not always choose the absolute least costly option to the DIF.²

The FDIC’s mandated adherence to the LCR can be problematic because it often has led to increased instability and concentration in the U.S. banking sector. Specifically, the LCR mandate over-emphasizes losses to the DIF, which is not taxpayer-funded. Rather, FDIC-insured banks pay insurance premiums determined by the risk the institution poses to the fund. The FDIC, in turn, invests money in the DIF into U.S. government securities, and the interest earned from these investments is added to the DIF.³

¹ 12 CFR § 360.1.

² Fed. Deposit Ins. Corp., A Brief History of Deposit Insurance in the United States 55 (1998), <https://www.fdic.gov/resources/publications/brief-history-of-deposit-insurance/book/brief-history-deposit-insurance-7.pdf>.

³ Fed. Deposit Ins. Corp., Understanding Deposit Insurance (Apr. 1, 2024), <https://www.fdic.gov/resources/deposit-insurance/understanding-deposit-insurance>.

When the FDIC has an overly rigid mandate to resolve failed banks under the LCR, it risks reinforcing the trend toward greater market concentration and missing valuable opportunities to approve transactions that could strengthen competition and stimulate economic activity in the U.S. Allowing the FDIC greater flexibility to consider a broader set of costs would better align its bid evaluations with the full economic impact of these transactions, rather than limiting the analysis to a narrow focus on costs to the DIF alone.

COMMITTEE CONSIDERATION

119TH CONGRESS

On December 10, 2025, Representative Flood introduced H.R. 6547, the *Least Cost Exception Act*. Representatives Bill Foster (D-IL), John Rose (R-TN), Jared Moskowitz (D-FL), and Mike Lawler (R-NY) were added subsequently as cosponsors.

The bill was referred solely to the Committee on Financial Services. Discussion draft versions of H.R. 6547 were attached to the September 9, 2025, hearing titled “Promoting the Health of the Banking Sector: Reforming Resolution and Broadening Funding Access for Long-Term Resilience” and the November 18, 2025, hearing titled, “The Future of Deposit Insurance: Exploring the Coverage, Costs, and Depositor Confidence.”

On December 16, 2025, the Committee on Financial Services met in open session to consider, among others, H.R. 6547. The Committee ordered H.R. 6547, as amended, to be favorably reported to the House of Representatives.

RELATED HEARINGS

Pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearings were used to develop H.R. 6547:

On September 9, 2025, the Subcommittee on Financial Institutions held a hearing titled, “Promoting the Health of the Banking Sector: Reforming Resolution and Broadening Funding Access for Long-Term Resilience.” The Subcommittee heard testimony from: Mr. Dory Wiley, President and CEO, Commerce Street Holdings; Mr. James B. Barresi, Partner, Squire Patton Boggs; Mr. Hugh Carney, Executive Vice President of Financial Institution Policy and Regulatory Affairs, American Bankers Association; Dr. Norbert Michel, Vice President and Director, Cato Institute Center for Monetary and Financial Alternatives; Mr. Robert James, President and CEO, Carver Financial Corporation, on behalf of National Bankers Association.

On November 18, 2025, the Committee on Financial Services held a hearing titled, “The Future of Deposit Insurance: Exploring the Coverage, Costs, and Depositor Confidence.” The Committee heard testimony from: Mr. James “Jim” Ryan, Chairman and CEO, Old National Bancorp; Mrs. Jill Castilla, President and CEO, Citizens Bank of Edmond; Mr. Chris Furlow, President and CEO, Texas Bankers Association; Mr. Grover Norquist, Founder and President, Americans for Tax Reform; and Mr. Jarryd E. Anderson, Partner and Co-Chair, Financial Services Group, Paul, Weiss, Rifkind, Wharton & Garrison LLP.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include record votes on the motion to report legislation and amendments thereto.

On December 16, 2025, the Committee ordered H.R. 6547, as amended, to be reported favorably to the House by a recorded vote of 50 yeas and 0 nays, a quorum being present. (Record Vote No. FC-208).

Before the question to report was called, the Committee adopted an amendment in the nature of a substitute offered by Representative Flood, designated FLOOD_028, which made minor edits and technical changes. The amendment was adopted by voice vote.

Committee on Financial Services

Markup 9

Bill: H.R. 6547

December 16, 2025

Measure: H.R. 6547 (as amended)

Amdt/Designated:

Record Vote No.

Motion: to report favorably

FC-208

Disposition:

AGREED TO (50-0)

Member	Yea	Nay	Not Recorded	Member	Yea	Nay	Not Recorded
Chairman Hill	X			Ranking Member Waters	X		
Mr. Lucas	X			Ms. Velázquez	X		
Mr. Sessions	X			Mr. Sherman	X		
Mr. Huizenga	X			Mr. Meeks	X		
Mrs. Wagner	X			Mr. Scott	X		
Mr. Barr	X			Mr. Lynch	X		
Mr. Williams (TX)	X			Mr. Green (TX)	X		
Mr. Emmer	X			Mr. Cleaver			X
Mr. Loudermilk	X			Mr. Himes	X		
Mr. Davidson	X			Mr. Foster	X		
Mr. Rose	X			Mrs. Beatty	X		
Mr. Steil	X			Mr. Vargas	X		
Mr. Timmons	X			Mr. Gottheimer	X		
Mr. Stutzman	X			Mr. Gonzalez	X		
Mr. Norman	X			Mr. Casten	X		
Mr. Meuser	X			Ms. Pressley			X
Mrs. Kim	X			Ms. Tlaib	X		
Mr. Donalds	X			Mr. Torres (NY)	X		
Mr. Garbarino	X			Ms. Garcia (TX)			X
Mr. Fitzgerald			X	Ms. Williams of GA	X		
Mr. Flood	X			Ms. Pettersen	X		
Mr. Lawler	X			Mr. Fields	X		
Ms. De La Cruz	X			Ms. Bynum	X		
Mr. Ogles	X			Mr. Liccardo	X		
Mr. Nunn	X						
Mrs. McClain	X						
Ms. Salazar	X						
Mr. Downing	X						
Mr. Haridopolos	X						
Mr. Moore (NC)	X						
29 0 1				21 0 3			

Committee Totals:

50	0	4
Yeas	Nays	Not Voting

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 6547 is to limit further concentration of the U.S. banking system by allowing the FDIC to waive the least cost resolution mandate if it determines certain conditions are met.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 6547. The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee will adopt as its own the cost estimate for the bill prepared by the Director of the Congressional Budget Office. However, a cost estimate was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

UNFUNDED MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the *Unfunded Mandates Reform Act*. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

EARMARK STATEMENT

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

FEDERAL ADVISORY COMMITTEE ACT STATEMENT

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act*.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title is the “*Least Cost Exception Act*.”

Section 2. Least cost resolution exception to avoid further concentration among global systemically important banking organizations

Section 2 provides the FDIC with the authority, at their discretion, to exercise an alternative method of the agency’s least cost resolution authority if: (1) the alternative is the least costly to the DIF of all alternatives that do not involve a transaction with a global systemically important banking organization and do not exceed the cost of liquidating the institution; (2) the difference between the cost of the selected alternative and a “covered alternative” (a sale to a G–SIB) is less than a “maximum allowable cost” limit established by the FDIC via rule within one year of enactment; and (3) in the case of a selected alternative, the person purchasing assets or assuming liabilities agrees to pay an assessment to the Corporation comprised of payments over time determined by the FDIC, but which may not be less than five years, and an amount that takes into account, on a case-by-case basis, criteria the Corporation establishes by rule within one year of enactment, including a realistic discount rate, the aggregate amount equal to the difference between the cost of the selected alternative and the cost of the covered alternative, and any bid inconsistent with the purposes of this Act.

The FDIC and the Board of Governors of the Federal Reserve System, in consultation with the Secretary of the Treasury, must determine that the potential additional risks to the DIF of the selected alternative are outweighed by the reasonably expected benefits of limiting further concentration of the U.S. banking system in global systemically important banking organizations.

The FDIC must submit a report to Congress within 30 days of selecting an alternative bid containing an analysis of the economic difference between the cost to the DIF of the selected alternative and the cost to the DIF of the least costly alternative that would have been selected absent the application of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

FEDERAL DEPOSIT INSURANCE ACT

* * * * *

SEC. 13. (a) INVESTMENT OF CORPORATION'S FUNDS.—

(1) **AUTHORITY.**—Funds held in the Deposit Insurance Fund or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) **LIMITATION.**—The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of \$100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.

(b) The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depository or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further*, That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of \$50,000 in any one depository institution, or to the establishment and maintenance in any depository institution of any depository accounts to facilitate the payment of insured deposits, or the making of loans to, or the purchase of assets of, insured depository institutions. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depository of public moneys, except receipts from customs, under such regulations as may be prescribed by the said Secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depository of public moneys and financial agent of the Government as may be required of it.

(c)(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured depository institution—

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe—

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such insured institution or the company which controls or will acquire control of such insured institution;

(iii) to guarantee such insured institution or the company which controls or will acquire control of such insured institution against loss by reason of such insured institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution—

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured depository institution under subsection (f) or (k) of this sec-

tion with such financial assistance as it could provide an insured institution under this subsection.

(4) LEAST-COST RESOLUTION REQUIRED.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) with respect to any insured depository institution unless—

(i) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

(ii) *except as provided in subparagraph (I)*, the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the Deposit Insurance Fund of all possible methods for meeting the Corporation's obligation under this section.

(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the Deposit Insurance Fund, the Corporation shall comply with the following provisions:

(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

(III) retain the documentation for not less than 5 years.

(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the Deposit Insurance Fund.

(C) TIME OF DETERMINATION.—

(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under paragraph (1) or (2) or any other provision of this section with respect to any depository institution shall be made as of the date on which the Corporation makes the determination to provide such assistance to the institution under this section.

(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any depository institution shall be made as of the earliest of—

(I) the date on which a conservator is appointed for such institution;

(II) the date on which a receiver is appointed for such institution; or

(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to such institution.

(D) LIQUIDATION COSTS.—In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subparagraph (A) (with respect to such institution), the amount of such cost may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subparagraph (C), minus the present value of the total net amount the Corporation reasonably expects to receive from the disposition of the assets of such institution in connection with such liquidation.

(E) DEPOSIT INSURANCE FUND AVAILABLE FOR INTENDED PURPOSE ONLY.—

(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, *and except as provided in subparagraph (I)*, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to the Deposit Insurance Fund by protecting—

(I) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

(II) creditors other than depositors.

(ii) DEADLINE FOR REGULATIONS.—The Corporation shall prescribe regulations to implement clause (i) not later than January 1, 1994, and the regulations shall take effect not later than January 1, 1995.

(iii) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this subparagraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the insurance fund does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

(F) DISCRETIONARY DETERMINATIONS.—Any determination which the Corporation may make under this paragraph shall be made in the sole discretion of the Corporation.

(G) SYSTEMIC RISK.—

(i) EMERGENCY DETERMINATION BY SECRETARY OF THE TREASURY.—Notwithstanding subparagraphs (A) and (E), if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-

thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that—

(I) the Corporation's compliance with subparagraphs (A) and (E) with respect to an insured depository institution for which the Corporation has been appointed receiver would have serious adverse effects on economic conditions or financial stability; and

(II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects,

the Corporation may take other action or provide assistance under this section for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver as necessary to avoid or mitigate such effects.

(ii) REPAYMENT OF LOSS.—

(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause, sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.

(iii) DOCUMENTATION REQUIRED.—The Secretary of the Treasury shall—

(I) document any determination under clause (i); and

(II) retain the documentation for review under clause (iv).

(iv) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under clause (i), including—

(I) the basis for the determination;

(II) the purpose for which any action was taken pursuant to such clause; and

(III) the likely effect of the determination and such action on the incentives and conduct of insured depository institutions and uninsured depositors.

(v) NOTICE.—

(I) IN GENERAL.—Not later than 3 days after making a determination under clause (i), the Secretary of the Treasury shall provide written notice of any determination under clause (i) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(II) DESCRIPTION OF BASIS OF DETERMINATION.—The notice under subclause (I) shall include a description of the basis for any determination under clause (i).

(H) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to take any action prohibited by paragraph (4) unless such provision expressly provides, by direct reference to this paragraph, that this paragraph shall not apply with respect to such action.

(I) LEAST COST RESOLUTION EXCEPTION.—

(i) IN GENERAL.—*With respect to an exercise of authority by the Corporation described in subparagraph (A), the Corporation may, at the discretion of the Corporation, select an alternative method of exercising such authority that is not the least costly to the Deposit Insurance Fund, if—*

(I) the Corporation determines that the selected alternative complies with the requirements of clause (iii); and

(II) the Corporation and the Board of Governors of the Federal Reserve System, after consultation with the Secretary of the Treasury, determine that the potential additional risks to the Deposit Insurance Fund of the selected alternative are outweighed by the reasonably expected benefits of limiting further concentration of the United States banking system in global systemically important banking organizations.

(ii) MAXIMUM COST TO THE DEPOSIT INSURANCE FUND.—*Not later than 1 year after the date of enactment of this subparagraph, the Corporation, by rule, shall establish criteria for determining on a case-by-case basis the maximum allowable cost against the net*

worth of the Deposit Insurance Fund that may be utilized to account for any determination under clause (i).

(iii) *REQUIREMENTS DESCRIBED.*—The requirements for the selected alternative described in clause (i) are as follows:

(I) *The selected alternative is least costly to the Deposit Insurance Fund of all alternatives that do not involve a transaction with a global systemically important banking organization and that do not exceed the cost of liquidating the insured depository institution.*

(II) *The difference between the cost of the selected alternative and the cost of a covered alternative is less than the maximum cost to the Deposit Insurance Fund specified pursuant to the rule adopted under clause (ii).*

(III) *In the case of a selected alternative that involves another person purchasing assets of the insured depository institution or assuming deposit liabilities of the insured depository institution, such person agrees to pay an assessment to the Corporation comprised of payments—*

(aa) made over a period to be determined by the Corporation, but which may not be less than 5 years; and

(bb) in an amount that takes into account, on a case-by-case basis, criteria the Corporation, by rule, shall establish, including a realistic discount rate, the aggregate amount equal to the difference calculated in subclause (II), and any bid inconsistent with the purposes of this Act, with such rule to be established by the Corporation not later than 1 year after the date of enactment of this subparagraph.

(iv) *REPORT TO CONGRESS.*—Not later than 30 days after selecting an alternative described in clause (i), the Corporation shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing an analysis of the economic difference between the cost to the Deposit Insurance Fund of the selected alternative and the cost to the Deposit Insurance Fund of the least costly alternative that would have been selected absent the application of this subparagraph.

(v) *COST DETERMINATIONS.*—All cost determinations required under this subparagraph shall be made in accordance with subparagraphs (B) and (C).

(vi) *DEFINITIONS.*—In this subparagraph:

(I) *COVERED ALTERNATIVE.*—The term “covered alternative” means a method of exercising authority described in subparagraph (A) that is the least costly to the Deposit Insurance Fund of all such methods that involve a sale of all or substantially all assets of the insured depository institution to,

and assumption of all or substantially all deposit liabilities of the insured depository institution by, a global systemically important banking organization.

(II) GLOBAL SYSTEMICALLY IMPORTANT BANKING ORGANIZATION.—The term “global systemically important banking organization” means a global systemically important BHC (as such term is defined in section 217.402 of title 12, Code of Federal Regulations, or any successor thereto) and any affiliate thereof.

(5) The Corporation may not use its authority under this subsection to purchase the voting or common stock of an insured depository institution. Nothing in the preceding sentence shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interest.

(6)(A) During any period in which an insured depository institution has received assistance under this subsection and such assistance is still outstanding, such insured depository institution may defer the payment of any State or local tax which is determined on the basis of the deposits held by such insured depository institution or of the interest or dividends paid on such deposits.

(B) When such insured depository institution no longer has any outstanding assistance, such insured depository institution shall pay all taxes which were deferred under subparagraph (A). Such payments shall be made in accordance with a payment plan established by the Corporation, after consultation with the applicable State and local taxing authorities.

(7) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto.

(8) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution’s capital levels are increased; and

(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

(ii) OTHER CRITERIA.—The depository institution meets the following criteria:

(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such de-

termination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

(B) PUBLIC DISCLOSURE.—Any determination under this paragraph to provide assistance under this section shall be made in writing and published in the Federal Register.

(9) Any assistance provided under this subsection may be in subordination to the rights of depositors and other creditors.

(10) In its annual report to the Congress, the Corporation shall report the total amount it has saved, or estimates it has saved, by exercising the authority provided in this subsection.

(11) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire,

(B) prohibits any person from offering to acquire or acquiring, or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under section 11 or 13, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

(d) SALE OF ASSETS TO CORPORATION.—

(1) IN GENERAL.—Any conservator, receiver, or liquidator appointed for any insured depository institution in default, including the Corporation acting in such capacity, shall be entitled to offer the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

(2) PROCEEDS.—The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

(3) RIGHTS AND POWERS OF CORPORATION.—

(A) IN GENERAL.—With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authorities of the Corporation as receiver under sections 11 and 15(b).

(B) RULE OF CONSTRUCTION.—Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

(C) FIDUCIARY RESPONSIBILITY.—In exercising any right, power, privilege, or authority described in subparagraph

(A), the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

(D) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority described in subparagraph (A) regarding the sale or disposition of assets sold to the Corporation pursuant to paragraph (1), the Corporation shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(4) LOANS.—The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured depository institution which is now or may hereafter be in default.

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—

(1) IN GENERAL.—No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

(f) ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.—(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank savings association or out-of-State holding company for which the Corporation provides assistance under subsection (c).

(2)(A) Whenever an insured bank with total assets of \$500,000,000 or more (as determined from its most recent report of condition) is in default, the Corporation, as receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the closed bank and the assumption of the liabilities of the closed bank, including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the State where the closed bank was chartered but established by an out-of-State bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or State supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State bank supervisor of the State in which the insured bank in default was chartered.

(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF DEFAULT.—

(A) ACQUISITION OF INSURED BANKS IN DANGER OF DEFAULT.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

(i) an insured bank in danger of default which has total assets of \$500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of default which have aggregate total assets of \$500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank

or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

(i) the holding company which controls the affiliated insured banks so acquired; or

(ii) any other affiliated insured bank.

(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

(i) at any time after the date of the enactment of the Financial Institutions Emergency Acquisitions Amendments of 1987, the Corporation provides any assistance under subsection (c) to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph, the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of default is located approves the acquisition.

(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.

(4)(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 3(d) of the Bank Holding Company Act of 1956, any provision of State law, and section 408(e)(3) of the National Housing Act shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the State in which such insured institution is located.

(C) No insured institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the institution were a national bank.

(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 3(d) of the Bank Holding Company Act of 1956 with respect to such holding company.

(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumption of liabilities or an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the "lowest acceptable offer"), is from an offeror that is not an existing in-State bank of the same type as the bank that is in default or is in danger of default (or, where the bank is an insured bank other than a mutual savings bank, the lowest acceptable offer is not from an in-State holding company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was

within 15 per centum or \$15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

(i) First, between depository institutions of the same type within the same State.

(ii) Second, between depository institutions of the same type—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth, between depository institutions of different types in the same State.

(v) Fifth, between depository institutions of different types—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(vi) Sixth, between depository institutions of different types in different States other than the States described in clause (v).

(C) **MINORITY BANK PRIORITY.**—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

(7) No sale may be made under the provisions of paragraph (2) or (3)—

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; or

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution.

(8) As used in this subsection—

(A) the term “in-State depository institution or in-State holding company” means an existing insured depository institution currently operating in the State in which the bank in default or the bank in danger of default is chartered or a company that is operating an insured depository institution subsidiary in the State in which the bank in default or the bank in danger of default is chartered;

(B) the term “acquire” means to acquire, directly or indirectly, ownership or control through—

- (i) an acquisition of shares;
- (ii) an acquisition of assets or assumption of liabilities;
- (iii) a merger or consolidation; or
- (iv) any similar transaction;

(C) the term “affiliated insured bank” means—

- (i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and
- (ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and

(D) the term “subsidiary” has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.

(9) NO ASSISTANCE AUTHORIZED FOR CERTAIN SUBSIDIARIES OF HOLDING COMPANIES.—

(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary, other than a subsidiary that is an insured depository institution, of a holding company in connection with any acquisition under this subsection.

(B) INTERMEDIATE HOLDING COMPANY PERMITTED.—This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being a conduit for assistance ultimately intended for an insured bank.

(10) ANNUAL REPORT.—

(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

- (i) The number of acquisitions under this subsection.
- (ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

(12) ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE.—

(A) IN GENERAL.—For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-State minority-controlled depository institution or depository institution holding company without regard to the fact that the total as-

sets of such minority-controlled bank are less than \$500,000,000.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) MINORITY BANK.—The term “minority bank” means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

(ii) MINORITY.—The term “minority” means any Black American, Native American, Hispanic American, or Asian American.

(g) Prior to July 1, 1951, the Corporation shall pay out of its capital account to the Secretary of the Treasury an amount equal to 2 per centum simple interest per annum on amounts advanced to the Corporation on stock subscriptions by the Secretary of the Treasury and the Federal Reserve banks, from the time of such advances until the amounts thereof were repaid. The amount payable hereunder shall be paid in two equal installments, the first installment to be paid prior to December 31, 1950.

(h) The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the closing of such branch substantially outweighs any additional risk of loss to the Deposit Insurance Fund which the exercise of such powers would entail.

(j) LOAN LOSS AMORTIZATION FOR CERTAIN BANKS.—

(1) ELIGIBILITY.—The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

(2) SEVEN-YEAR LOSS AMORTIZATION.—(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial

statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(3) REGULATIONS.—Not later than 90 days after the date of enactment of this subsection, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

(4) DEFINITIONS.—As used in this subsection—

(A) the term “agricultural bank” means a bank—

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area the economy of which is dependent on agriculture;

(iii) which has assets of \$100,000,000 or less; and

(iv) which has—

(I) at least 25 percent of its total loans in qualified agricultural loans; or

(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

(B) the term “qualified agricultural loan” means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

(5) MAINTENANCE OF PORTFOLIO.—As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.

(k) EMERGENCY ACQUISITIONS.—

(1) IN GENERAL.—

(A) ACQUISITIONS AUTHORIZED.—

(i) TRANSACTIONS DESCRIBED.—Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

(I) a savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

(II) any other savings association to acquire control of such savings association, or

(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

(ii) TERMS OF TRANSACTIONS.—Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) APPROVAL BY APPROPRIATE AGENCY.—Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS.—Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Comptroller of the Currency, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.S

(v) DUAL SERVICE.—Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS.—Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) CONSULTATION WITH STATE OFFICIAL.—

(i) CONSULTATION REQUIRED.—Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

(ii) PERIOD FOR STATE RESPONSE.—The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL.—If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

(2) SOLICITATION OF OFFERS.—

(A) IN GENERAL.—In considering authorizations under this subsection, the Corporation may solicit such offers or

proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

(B) MINORITY-CONTROLLED INSTITUTIONS.—In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

(3) DETERMINATION OF COSTS.—In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) BRANCHING PROVISIONS.—

(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

(B) RESTRICTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the savings association is located.

(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by savings associations for assistance pursuant to subsection (c) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the fu-

ture unless the member's tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) OTHER CRITERIA.—The member meets the following criteria:

(I) Before enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL.—If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) ECONOMICALLY DEPRESSED REGION DEFINED.—For purposes of this paragraph, the term "economically depressed region" means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due

to severe economic conditions, such as a decline in energy
or agricultural values or prices.

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